AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

4-19-91
Vol. 56 No. 76

federal register

Friday
April 19, 1991

United States
Government
Printing Office
SUPERINTENDENT
OF DOCUMENTS
Washington, DC 20402

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SECOND CLASS NEWSPAPER
Postage and Fees Paid
U.S. Government Printing Office
(ISSN 0097-6326)

4-19-91
Vol. 56 No. 76
Pages 15979-16260

federal register

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

CHICAGO, IL

WHEN: April 25, at 9:00 am
WHERE: 219 S. Dearborn Street
Conference Room 1220
Chicago, IL
RESERVATIONS: 1–800–366–2998

WASHINGTON, DC

WHEN: May 2, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202–523–5240

WASHINGTON, DC

WHEN: May 23, at 9:00 am
WHERE: Office of the Federal Register
First Floor Conference Room
1100 L Street, NW, Washington, DC
RESERVATIONS: 202–523–5240 (voice); 202–523–5229 (TDD)

NOTE: There will be a sign language interpreter for hearing impaired persons at the May 23, Washington, DC briefing.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

[Docket No. 91-047]

Revision of Delegations of Authority

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture and general officers of the Department to delegate the authority to prescribe and collect user fees for certain agricultural quarantine and inspection services.

EFFECTIVE DATE: April 16, 1991.

FOR FURTHER INFORMATION CONTACT: Donna J. Ford, Supervisory Accountant, User Fee Branch, Budget and Accounting Division, Animal and Plant Health Inspection Service, USDA, room 246, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8785.

SUPPLEMENTARY INFORMATION: Sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a) as amended by section 1203 of the Omnibus Budget Reconciliation Act of 1990 (21 U.S.C. 136a), authorize the Secretary of Agriculture to prescribe and collect fees to cover the cost of providing certain agricultural quarantine and inspection services. These include:

(a) Providing agricultural quarantine and inspection services in connection with the arrival at a port in the customs territory of the United States, or the preclearance or preinspection at a site outside the customs territory of the United States of an international passenger, of a commercial vessel, commercial aircraft, commercial truck, or railroad car;

(b) Providing for the inspection of plants and plant products offered for export or transiting the United States and certifying to shippers and interested parties as to the freedom of such plants and plant products from plant pests according to the phytosanitary requirements of the foreign countries to which such plants and plant products may be exported, or to the freedom from exposure to plant pests while in transit through the United States;

(c) Carrying out the provisions of the Federal animal quarantine laws that relate to the importation, entry, and exportation of animals, articles, or means of conveyance;

(d) Performing veterinary diagnostics testing in accordance with section 11 of the Act of May 29, 1884 (21 U.S.C. 114a); and

(e) Providing other inspection services at points of entry in the United States in addition to the regular or on-call basis currently available in connection with such vessels or aircraft.

Under the generic User Fee statute, 31 U.S.C. 9701, heads of government agencies are authorized to collect fees for certain services provided by the agencies. Pursuant to this statute, the Secretary of Agriculture has authority to collect user fees for agricultural quarantine and inspection services provided in connection with the departure of passengers from Puerto Rico and Hawaii on certain domestic flights.

This document delegates these user fee authorities to the Assistant Secretary for Marketing and Inspection Services, and redelegates them to the Administrator of the Animal and Plant Health Inspection Service.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after pbulication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order No. 12291. Finally, this action is not a rule as defined by 5 U.S.C. 601 *et seq.*, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, part 2, title 7, Code of Federal Regulations, is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.17 is amended by adding a new paragraph (b)(40) to read as follows:

§ 2.17 Delegations of authority to the Assistant Secretary for Marketing and Inspection Services.

* * * * *

(b) * * *

(40) Authority to prescribe and collect fees under the Act of August 31, 1951, as amended (31 U.S.C. 9701), and sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), as amended.

* * * * *

Subpart F—Delegations of Authority by the Assistant Secretary for Marketing and Inspection Services

3. Section 2.51 is amended by adding a new paragraph (a)(44) to read as follows:

§ 2.51 Delegations of authority to the Administrator, Animal and Plant Health Inspection Service.

(a) * * *

(44) Authority to prescribe and collect fees under the Act of August 31, 1951, as amended (31 U.S.C. 9701), and sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), as amended.

Dated: April 16, 1991.

For Subpart C:

Ed Madigan,

Secretary of Agriculture.

Dated: April 16, 1991.

For Subpart F:

JoAnn R. Smith,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 91-9265 Filed 4-8-91; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Stabilization and Conservation Service

7 CFR Part 704

Commodity Credit Corporation

7 CFR Part 1410

Agricultural Resources Conservation Program

AGENCY: Agricultural Stabilization and Conservation Service, Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Food, Agriculture, Conservation, and Trade Act of 1990 which was enacted on November 28, 1990, amended the Food Security Act of 1985 with respect to the statutory provisions of the Conservation Reserve Program (CRP). In addition, the 1990 Act provides for the creation of the Agricultural Resource Conservation Program (ARCP) as an umbrella program for the CRP and other conservation programs. This final rule sets forth the revised CRP for 1991 through 1995 in a separate part (7 CFR part 1410) and the existing regulations (7 CFR part 704) will continue to be applicable to existing CRP contracts.

EFFECTIVE DATE: April 19, 1991.

FOR FURTHER INFORMATION CONTACT: James R. McMullen, Director, Conservation and Environmental Protection Division, ASCS, P.O. Box 2415, Washington, DC 20013; Phone (202) 447-6221.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and provisions of Departmental Regulation 1512-1 and has been classified as "major." It has been determined that these provisions will result in an annual effect on the national economy of $100 million or more. However, (1) no major increase in costs or prices for consumers, individual industries, State or local agencies, or geographic regions, or (2) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets will result upon implementation of these provisions.

Copies of an updated regulatory impact analysis are available upon request from the previously mentioned contact.

It has been determined by an environmental assessment that this action will not have any significant adverse impact on the quality of the human environment.

Therefore, an environmental impact statement is not needed.

Copies of a final environmental assessment are available from the previously mentioned contact.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The titles and numbers of the Federal Domestic Assistance Program to which this rule applies are: Title, Conservation Reserve Program; Number 10.069, as found in the Catalog of Federal Domestic Assistance.

The Office of Management and Budget has approved the information collection requirements contained in the current regulations at 7 CFR part 704 under provisions of 44 U.S.C. chapter 33 and OMB number 0560-0125 has been assigned.

The information collection requirements of the final rule at 7 CFR part 1410 will be submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1980.

Public reporting burden for the information collections contained in these regulations are estimated to vary from 3 minutes to 6 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Current Regulations

The current regulations in 7 CFR part 704 were published as a final rule on February 11, 1987 (52 FR 4269) and amended on May 9, 1990 (55 FR 19243). The regulations implemented the Conservation Reserve Program (CRP) which was authorized by title XII of the Food Security Act of 1985, as amended (the "1985 Act").

The intent of the CRP is to permit the Commodity Credit Corporation (CCC) to enter into contracts with owners and operators of highly erodible cropland to assist such owners and operators in conserving and improving the Nation's soil and water resources. By entering into a contract, the owner or operator agrees to implement a conservation plan approved by the local Conservation District for converting highly erodible cropland normally devoted to the production of an agricultural commodity to a less intensive use. CCC provides technical assistance, cost shares for the costs of establishing the conservation practices required by the conservation plan, and makes annual land rental payments to compensate the owner or operator for taking the cropland out of production.

This final rule sets forth the terms and conditions of the revised CRP for enrollment during 1991 through 1995. The current regulations set forth the: (1) Eligibility of land; (2) duration of contracts; (3) obligations of participants and CCC; (4) eligible practices; (5) levels of cost-share for establishing practices; (6) provisions for annual rental payments; (7) handling of violations; and (8) other program matters.

Statutory Changes

On November 28, 1990, the 1985 Act was amended by title XIV of the Food, Agriculture, Conservation, and Trade Act of 1990 (the "1990 Act").

The 1990 Act creates an umbrella program, the Environmental Conservation Acreage Reserve Program (ECARP), made up of the CRP and the Wetland Reserve Program (WRP). The ECARP is a part of the larger ARCP.

The regulations for the ARCP will be set forth in three subparts. Subpart A provides general provisions that are applicable to both CRP and WRP. Subpart B provides regulations governing operation of CRP and subpart C will provide WRP regulations. This final rule contains only subparts A and B. Subpart C will be provided at a later date.

For ECARP, the 1990 Act sets a total enrollment target of 40-45 million acres to be achieved by the end of 1995, of which approximately 34 million acres are the existing CRP acres. Up to 1 million acres may be enrolled in the WRP. The 1990 Act reserves 1 million CRP acres for each of the years 1994 and 1995.

The 1990 Act amendments to the 1985 Act do not change the basic nature of the CRP. However, title XIV of the 1990 Act contains a number of new or revised CRP provisions. Those amendments changed the provisions of the 1985 Act and, therefore require new regulations.

The thirty-four million acres of land were enrolled in the CRP prior to the passage of the 1990 Act through voluntary contracts between CCC and

the owners and operators of highly erodible and other sensitive cropland. Generally the contracts require the owner and operator to provide for the establishment of permanent vegetative cover or trees and other approved conservation practices.

With respect to land eligibility, section 1432 of the 1990 Act provides that the following lands may be considered by the Secretary to be eligible for the program: (1) Highly erodible cropland where the productivity of the land is substantially diminished or the land cannot be farmed under a conservation plan required by the conservation compliance ("sodbuster") provisions of the 1985 Act; (2) certain marginal pasture lands; (3) cropland which, if left in production, would pose a water quality threat; (4) newly created permanent grass waterways or contour grass sod strips established and maintained as part of an approved conservation plan; (5) land to be devoted to living snowfences, permanent wildlife habitat, windbreaks, shelterbelts, or filter strips, provided an easement is created for the useful life of the practice; and (6) lands that pose an off-farm environmental threat, or threat of continued degradation of productivity due to soil salinity, if such lands remain in production. It is provided in § 1410.103 of the final rule that all of the above classes of land, except marginal pasture lands, may be eligible for CRP.

Section 1231 of the 1985 Act, as amended by the 1990 Act, specifically provides that contracts for 10–15 years may be offered. However, for new contracts planted to hardwood trees, shelterbelts, windbreaks or wildlife corridors, the choice, within the 10–15 year range, will be made by the participant. Also for exisiting CRP contracts where the established grass cover will, with the approval of CCC, be converted to those practices, the participant may elect to extend the term of the contract to not exceed a total of 15 years. Otherwise, contracts will be 10 years in duration, as provided in § 1410.104 of this final rule.

Section 1432 of the 1990 Act amended section 1231 of the 1985 Act to provide that upon application of a State agency, the Secretary shall designate areas such as the Chesapeake Bay Region and other areas of special environmental sensitivity as priority areas for the CRP in which the Secretary will attempt to maximize program enrollment. Section 1410.105 of the regulations provides for the implementation of this provision.

In addition, the Secretary has discretionary authority, provided in section 1434 of the 1990 Act, to give priority to bids based on environmental benefit and by region to the extent that water quality, wildlife conditions, or abatement of erosion may be accomplished. Section 1410.114 of the regulations implements this authority as determined necessary by CCC to meet the goals of CRP.

The 1985 Act and the 1990 Act amendments provide that eligible land must be cropland in order to be entered in the program. It is provided in § 1410.103 of the regulations that beginning in 1991 cropland status for new CRP contracts will require that the land be planted to an "agricultural commodity" in 2 of the 5 years immediately preceding 1991. In accordance with the provisions of the statute, an "agricultural commodity" has been defined in § 1410.3, as any crop planted and produced by annual tilling of the soil or on an annual basis by one trip planters or sugar cane planted or produced in a State or alfalfa and other multiyear grasses and legumes in rotation, as approved by the Secretary.

The 1990 Act amendments provide, in addition, that land shall be considered planted to an agricultural commodity during a crop year if an action of the Secretary prevented land from being planted to the commodity during the crop year. The definition of "agricultural commodity" found at § 1410.3 of the regulations incorporates this provision.

The 1985 Act required that participants establish approved vegetative cover on contracted land. Section 1433 of the 1990 Act provides, in addition to vegetative cover, that water cover for the enhancement of wildlife may also be an approved cover on contracted land. The 1990 Act amendments also provide that such water cover shall not include ponds for the purpose of watering livestock, irrigating crops, or raising fish for commercial purposes. Section 1410.112 implements this provision.

Section 1433 of the 1990 Act amended section 1232 of the 1990 Act to require for the duration of new contracts in counties that have not reached their acreage limits for ECARP and related programs, the participant must agree that for any highly erodible land acquired after November 28, 1990 the participant may not grow an agricultural commodity on such land if it does not have a history of being planted to an agricultural commodity other than a forage crop. This restriction will limit, in some cases, the uses that new CRP participants may make of such land. The proposed rule reflected the limitation of this provision to counties that had not met the ECARP county limit. The summary in the preamble to the proposed rule only noted that it would apply in some cases.

Section 1410.109 implements this provision and provides, too, that the most recent 5 year period be used for the purposes of determining the history of agricultural commodity production.

Section 1433 of the 1990 Act amended the 1985 Act to provide that alley-cropping on CRP land may be allowed for CRP land planted to hardwood trees. This cropping system involves crop production between rows of trees. If this authority is exercised, participation in the program will be through bids in which the applicant must offer to accept at least a 50 percent reduction in the CRP annual rental payment. The actual reduction in rental payment will be determined by CCC, based upon criteria, such as the percentage of the total acreage that will be available for cropping and projected returns to the producer from such cropping. Section 1410.106 provides the authority to implement this provision.

The 1990 Act amendments allow, where the Secretary determines appropriate and in the public interest, for cost-share assistance at a maximum 50 percent allowance for cover establishment or tree costs. In addition, however, the 1990 Act amendments prohibit a CRP cost-share payment if another Federal cost-share payment has been received. It also limits the total cost-share which can be made from all sources, including non-USDA sources, to not more than 100 percent of the total establishment cost. Maintenance cost-shares are also allowed in some limited instances by the 1990 Act amendments. Sections 1410.118 and 1410.119 of the regulations implement these provisions.

Other provisions in section 1434 of the 1990 Act amended section 1234 of the 1985 Act to specifically exempt CRP payments from sequester orders under the (Gramm-Rudman-Hollings Act); require CRP payments to States involved in special CRP enhancement programs be made in cash only; and to provide that such payments to States are not subject to payment limitation provisions. Section 1410.122 implements these provisions.

The 1990 Act amendments provide for converting CRP land already in a permanent grass cover to other conservation uses in some instances. Such other uses include planting hardwood trees or restoring prior converted wetlands back to wetland status. Cost share assistance, as determined to be appropriate and in the public interest, is allowed for the new practices but is limited by the 1990 Act amendments to provide that the total

cost-share assistance may not exceed the amount that would have been paid for the new practice had such practice been the original practice. Authority is provided in §§ 1410.107 and 1410.108 for implementing these provisions.

The 1990 Act amendments provide for the continuation of the protection of bases and allotments with respect to the CRP land if the conservation practices, by agreement, are continued beyond the end of the normal contract period. Section 1436 of the 1990 Act amended section 1236 of the 1985 Act to provide that there may not be any additional payments of any kind for such contract extension, but does permit the Secretary to authorize haying and grazing of such land in the extension period, except during any consecutive 5 month period established by the State committee beginning April 1 and ending October 31. Section 1410.117 implements this provision for extending base history protection.

The regulations provide, also, that in determining acceptability of offers, CCC may use a formula based upon a number of environmental factors to determine the sum of environmental benefits that can be obtained from the acres of land offered for participation in the program. These factors include: (1) Surface water quality; (2) ground water quality; (3) soil productivity; (4) conservation compliance; (5) tree planting; (6) 319 enrollment; and (7) conservation priority area enrollment. In analyzing the bid requests in order to determine total environmental benefits, CCC expects to use a system that would evaluate the seven criteria in such a manner as to not allow any one criteria to unduly affect bid acceptance.

As before, the CRP program will be operated by CCC through the Agricultural Stabilization and Conservation Service (ASCS) using ASCS's county and State offices. The remaining enrollment for the CRP will be limited in light of the 34 million acres already enrolled. In order to maximize the benefit for the monies to be expended, bid evaluation and the land for which bids may be solicited may vary as conditions change. The 1990 Act amendments permit a continuous signup for land, to be converted to hardwood trees, but it is not anticipated at this time that there will be a continuous sign-up because of the difficulty of encouraging competing bids without a definite bid period.

Discussion of Comments

CCC received 29 letters containing 76 comments concerning the proposed rule published on March 6, 1991. Entities responding included individuals, state governments, local governments, State farm organizations, national conservation organizations, national farm and commodity organizations, and Members of Congress. Comments came from eleven States and the District of Columbia.

Changes in this final rule from the proposed rule of March 6, 1991 are based upon CCC's experience in administering the 1987 CRP final rule, the proposed rule, public comments to the proposed rule and consultation with other USDA agencies, the Fish and Wildlife Service of the United States Department of the Interior, and the Environmental Protection Agency. Numerous minor editorial and other changes have been made in the text and order of the regulations for clarity and to facilitate the application of the regulations. For example: the provisions of § 1410.123 of the proposed rule regarding assignments has been moved from subpart B; which contains those regulations dealing only with the CRP to subpart A which has general provisions for the ARCP; and the sections that followed § 1410.123 in the proposed rule have been renumbered accordingly.

The discussion of comments that follows is organized by section in the same sequence as the final rule.

Section 1410.2 Administration

One comment was received regarding the furnishing of voluntary data to determine eligibility for program benefits. The respondent argued that a specific form number should be created for this purpose and the form number indicated in the final rule. Creation of another form does not appear necessary or feasible for this purpose as the relevant information can vary depending on the ARCP program and such information as is needed will be developed in conjunction with the completion of the form contract for the individual program.

Section 1410.3 Definitions

Seven comments suggested that land devoted to asparagus be included in the definition of an "agricultural commodity" for purpose of determining a qualifying crop history for land to be enrolled in the CRP. Generally for purposes of the 1985 Act, an "agricultural commodity" is defined to be an annually-tilled crop or sugar cane. However, the CRP purposes, Congress has defined the term to include alfalfa and legumes in a rotation approved by the Secretary. Adding asparagus would go beyond that provision. Further, including asparagus land in the CRP would not, given the perennial nature of the crop and the lack of a price support program for the crop, produce the same public benefit as the enrollment of other lands in the program.

Four comments requested clarification of the life-span of "useful life easement" and in response to those comments the proposed regulations have been modified to specify that the life-span will be 15 or 30 years depending on the practice.

One comment suggested adding a definition of wetlands to the part 1410. In order to assure consistency of treatment, to the extent practicable, it has been determined that part 1410 should, as proposed, utilize the definition in 7 CFR part 12 which contains rules for wetland conservation.

One comment recommended that the provisions regarding annual rental payments be expanded to include interest for late payment. For those instances where monies have been appropriated and the payment is not made within 30 days by CCC, CCC already has regulations in place which would allow for the payment of interest in appropriate cases. Accordingly, this suggestion has not been adopted.

Section 1410.4 Maximum County Acreage

Comments were received which suggest that limits on CRP enrollment be set for conservation districts within large counties. The statute only authorizes county-wide limits and any attempt to set more discrete limits would be unwieldy and would limit the conservation options available to farmers. Accordingly, this comment has not been adopted. However, in assessing bids, CCC can, in special circumstances, take local factors into account, if feasible.

Section 1410.101 General Description

Included in the comments was an objection that allowing highly erodible land into the program rewards producers for not undergoing conservation measure on their own. As the program is designed to achieve the maximum conservation for the dollars spent and the regulations are consistent with the statutory provisions, no charge in the regulations has been made with regard to this concern.

Section 1410.102 Eligible Persons

Generally, under the provisions of the 1985 Act, a person may not qualify land for the CRP unless the person has owned the land for three years unless, among other exceptions, the circumstances present adequate assurances that the land was not acquired for purposes of placement in

the CRP. A comment suggested that such assurances exist where the buyer places a residence on the property. Providing an exemption for such cases would still provide an incentive to land speculation for CRP purposes, at the expense of long-term producers, and has not been adopted.

Another exemption applies to producers who redeem their foreclosed upon property within the redemption period allowed for by state law. One comment suggested that the exemption be extended to include certain rights of repurchase that may apply under federal law. The statute, however, limits this exemption to redemptions under state law.

Section 1410.103 Eligible Land

Three comments suggested adding marginal pasture lands to the list of land eligible for the CRP. Conservation with respect to such lands can be achieved more efficiently under other programs such as the America the Beautiful program provided for in the 1990 Act which would allow planting trees on marginal pasture land. Also, conservation on such lands can be obtained under the Agricultural Conservation Program provided for in 7 CFR part 701. Because of the WRP, the CRP regulations, as proposed, did not allow wetlands to qualify solely as wetlands for CRP purposes. Two comments requested clarification as to whether all wetlands are ineligible for enrollment in CRP on any basis. As the legislative history clearly indicates a preference for the placement of farmed wetlands in the WRP, the regulations have been modified to exclude the entry of such wetlands in the CRP. This issue may be revisited if need be after experience is obtained with respect to the operation of the WRP. "Prior converted wetlands," which is a different category under the 1990 Act, may still qualify for the CRP in some instances.

To provide consistency with other CCC programs, the final rule adopts a suggestion that for crop history purposes, an agricultural commodity may be considered to have been produced if production was not possible, as determined by CCC using standard CCC concepts, because of conditions beyond the control of the producer.

Another comment suggested that "floating" contour grass strips be eligible for the CRP and that the restriction to grass strips created after the 1990 Act be removed. These suggestions have not been adopted as the purpose of the CRP payments is to provide an incentive for new practices and since "floating" strips (non-permanent strips whose location on the farm may be shifted from year to year) will not produce the same long-term benefits as stationary strips and since the monitoring required for floating strips would be much greater.

Another comment objected to the provisions in the proposed rule for enrolling lands for water quality purposes on the ground that such lands should be placed in the Agricultural Water Quality Incentive Program (AWQIP) provided for in the 1990 Act. That program is not in place at the present time and it is not desirable to delay obtaining water quality benefits through CRP enrollments, particularly as the scope of the AWQIP is not known at this time.

As indicated previously, the CCC operates the CRP through the ASCS. One comment suggested that the ASCS Deputy Administrator, State and County Operations (DASCO) should be required to seek advice from state technical committees in consultation with state conservation agencies to determine eligibility of cropland for CRP. Technical determinations as are needed on land eligibility questions are made in consultation with the Department's Soil Conservation Service (SCS) which is free to conduct such additional consultation as may be needed.

One comment recommended that the crop history eligibility requirements be changed to allow for a determination of the history immediately preceding the date of enrollment rather than its history as of the date of the 1990 Act. This would encourage planting for purposes of creating eligibility for the CRP and has not been adopted.

Section 1410.104 Duration of Contracts

One comment suggested that the general provisions for 10 year contracts should be changed so that the typical contract would be 15 years. Because of the uncertainty of future conditions and budgetary considerations, this comment has not been adopted.

Section 1410.105 Conservation Priority Areas

Two comments requested that the rules be modified to permit State agencies other than the State water quality agencies to make an application for the assignment of a CRP priority area. As the statute contemplates that there will only be one agency for that purpose and as it is reasonable and necessary to have only one official State position on that matter, this suggestion has not been adopted.

Section 1410.106 Alley-Cropping

The final rule has been modified to adopt the suggestion that CCC's authority to allow alley-cropping on CRP lands planted to hardwoods include those instances in which an existing CRP cover is converted to hardwoods under the conversion provisions of the regulations. Another comment sought greater detail on the alley-cropping allowance, but those details will not be developed until such time as CCC determines that it is appropriate and cost-efficient to exercise that authority.

Section 1410.108 Restoration of Wetlands

The 1990 Act contains CRP provisions giving farmers the option of restoring eligible wetlands in return for granting to CCC a WRP easement. One comment objected to the provisions specifying that the easement will be permanent but that provision is consistent with the expected provisions of the WRP. Nonetheless, the word "permanent" has been removed so that the rule leaves the length of the easement to a determination under the WRP regulations. Another comment suggested that wetlands restored in connection with the operation of the wetland conservation provisions of 7 CFR part 12 be eligible for the CRP, but part 12 has its own easement requirements. Other comments suggested that the CRP restoration provision be expanded to include farmed wetlands and be modified to eliminate the limitation of this provision to highly erodible prior converted wetland. However, as the Act clearly distinguishes between farmed wetlands and prior converted wetlands, and specifies that the land must be highly erodible and must be a prior converted wetland, adoption of these suggestions is not permitted by the 1990 Act. Another comment suggested renaming the section of the regulations dealing with this restoration, and that comment has been adopted. It should be noted that the WRP provisions of the 1990 Act may include additional provisions relating to CRP land. However, those provisions will be the subject of separate rule-making for the WRP.

Section 1410.109 Obligations of Participant

Comments were received which suggested that the CRP regulations should take into account that the creation of wetlands through restoration may create nuisance problems in some instances. There is sufficient authority in the regulations for addressing those problems. However, the final regulations

adopt the suggestion of dropping the provision requiring that the participant act as a good steward of the land, as that provision may not be sufficiently definite to accomplish a material purpose.

Section 1410.110 Obligations of the Commodity Credit Corporation

One comment addressed the provisions in the rule concerning limited fall and winter grazing on CRP land where the grazing is incidental to the gleaning of crop residues. That activity is permitted only with prior approval of CCC in exchange for a payment reduction. The respondent asked that the rule specify the amount of the reduction. This comment has not been adopted as the rate has not been determined at this time, may change from time to time, and should in due course be available to the producer at the time of the application.

Section 1410.111 Conservation Plan

The final rule, to encourage tree-planting, adopts the suggestion that in those instances in which a participant is required to plant at least ten acres of hardwood trees the CCC should be permitted to allow three years for the establishment of the trees.

Section 1410.112 Eligible Practices

One comment suggested that the establishment of tall grass as a windbreak be considered an appropriate conservation practice for CRP purposes. There is some doubt about the adequacy of this practice for its intended purposes. However, there is sufficient authority in the rule to allow for approving this practice if it is determined to be appropriate in individual cases.

Section 1410.114 Acceptability of Offers

Four comments were suggested that the eligibility of land provisions of the rule and the provisions relating to the acceptability of offers for CRP has been redesigned to include environmentally sensitive land to the point that highly erodible land is not receiving equal consideration. As the proposed rule provides authority for the CCC, consistent with the 1990 Act, to take into account a wide range of factors, no modification in the final regulations has been found to be appropriate regarding this comment. Four comments suggested that there should be greater information concerning the application of priorities and another comment objected to the use of a formula because regional needs might be ignored. The particular priorities given in individual sign-ups may change from time to time as conditions and prior enrollments warrant, and there is nothing in the rule which would prevent CCC from taking into account regional variations as the need arises. Accordingly, no change has been made in the regulations based on these comments.

Section 1410.115 CRP Contract

One comment suggested that regulations should include a reference to the statutory exemption, added in the 1990 Act, of CRP rental payments from sequester orders issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985. Such a reference is not necessary and inclusion of a reference in the rule would not be appropriate as it does not involve as such a term or condition of CRP participation and does not involve a rule-making matter within the jurisdiction of USDA.

Section 1410.117 Extended Base Protection

Provision was made in the 1990 Act for a study to be completed by the end of 1993 of the effect of, among other things, the expiration of CRP contract. Also provision was made in the 1990 Act to authorize the Secretary in the years 1996–2000 to extend by mutual agreement of the term of the CRP contracts. One comment suggested expediting the study to advance the time at which the extensions may be offered. This comment goes beyond the scope of the rule-making and expediting the study would not advance the time that the extension referred to could be made.

Section 1410.122 State Enhancement Program Payments

One comment objected to the "cash only" provisions for payments to states under special enchantment program on the ground that it would inhibit states making seed available to producers for CRP plantings. The "cash only" provision applies to payments to States and would not effect such assistance to producers by States.

Section 1410.123 Transfer of Land

One comment suggested that if a transfer is made of the property to a person who does not participate in the program, the original participant should not be liable for a refund of payments made under the contract. Adopting this provision would be contrary to the provisions of the 1990 Act and contrary to the 10-year obligation which is inherent in the program. This suggestion, accordingly has not been adopted. However, provision is made in the rule for allowing CCC, in appropriate cases as CCC deems appropriate, to not demand a refund if the property is transferred to a Federal agency which agrees to conserve the property in accordance with the CRP terms. With respect to those provisions, the proposed rule has been revised to specify in accordance with Public Law 101–512 that no refund of rental payments and cost sharing payments shall be required when the land is purchased by or for the United States Fish and Wildlife Service.

Other Comments

One comment suggested that persons with pre-existing hardwood tree contracts be permitted to extend the term of their contracts. As the special provisions for longer terms for hardwood trees which were contained in the 1990 Act are designed to encourage new plantings, this suggestion, which related to old plantings, has not been adopted.

One comment objected that the CRP regulations do not refer to the State Technical Committees which are authorized in title XIV of the 1990 Act. Such committees have not yet been established and there is no provision of the rule which would prevent the recommendations of such committees from being taken into account at the appropriate time to determine whether modifications of the program are required. No change in the rule is needed.

Another comment objected that those persons who submitted bids for the CRP sign-up held in March of 1991 should have been permitted to submit bids for contracts that would not have become effective until fiscal year 1992. As this relates to a particular sign-up which has now passed and not to the provisions of the regulations as such, no revision of the rule was found to be needed. Rather, it is believed that the discretion should lie with CCC to determine for each sign-up which bids will be accepted in order to achieve the most cost-efficient expenditure of CRP funds. Those considerations can include limiting enrollment to those instances in which conservation benefits will be achieved immediately.

Four comments objected to the limitation of the comment period for the proposed rule to 15 days. That period was limited for the reasons set out in the proposed rule.

The 1990 Act contains provisions for a re-organization of the appeals office within ASCS. One comment suggested that the final rule should reflect those provisions. As of this time, there has been no re-organization but the final

regulations may be adjusted as needed when such a re-organization occurs.

A comment received suggested that the proposed changes in the program be made public. Changes in the regulations as may be needed from time to time will be the subject of public notice as needed and appropriate. In addition, ASCS and CCC makes information available concerning the operation of the program through press releases and other sources.

List of Subjects in 7 CFR Parts 704 and 1410

Administrative practices and procedures, Conservation plan, Contracts, Technical assistance, Natural resources, Environmental indicators, and Easements.

Final Rule

Accordingly, 7 CFR part 704 and 7 CFR chapter XIV are amended as follows:

PART 704—[AMENDED]

1. The authority citation for 7 CFR part 704 is revised to read as follows:

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3801–3847.

2. The heading of 7 CFR part 704 is revised to read as follows:

PART 704—1986–1990 CONSERVATION RESERVE PROGRAM

3. Section 704.1 is amended by adding paragraph (c) to read as follows:

§ 704.1 General description of the program.

* * * * *

(c) The provisions of this part shall only apply to contracts or bids with respect to participation in the CRP by persons who submitted bids to enter into the program prior to November 28, 1990, and whose bids were accepted by CCC prior to that date, unless otherwise agreed to by CCC.

4. A new part 1410 is added to subchapter B to read as follows:

PART 1410—1991–95 CONSERVATION RESERVE PROGRAM

Subpart A—General Provisions

Sec.

Subpart B—Conservation Reserve Program

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 3831–3847.

Subpart A—General Provisions

§ 1410.1 Applicability.

The regulations in this part govern operation of the Environmental Conservation Acreage Reserve Program (ECARP) established by title XII of the Food Security Act of 1985. The ECARP shall consist of the Conservation Reserve Program (CRP) covered under subpart B of this part and the Wetlands Reserve Program (WRP) covered under subpart C of this part. With respect to the CRP, subpart B shall, unless otherwise provided for, only be applicable for contracts approved and bids for participation offered for enrollment periods after November 28, 1990. With respect to all other CRP contracts approved, and bids for participation offered, the provisions of part 704 of this title shall be applicable.

§ 1410.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, CCC, and the Administrator, ASCS. In the field, the regulations in this part will be administered by the Agricultural Stabilization and Conservation State and county committees ("State committees" and "county committees", respectively).

(b) State executive directors, county executive directors and State and county committees do not have authority to modify or waive any of the provisions of this part.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee which has not been taken by such committee. The State committee may also:

(1) Correct or require a county committee to correct any action taken by such county committee which is not in accordance with this part; or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, and the Administrator, ASCS, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

(e) Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be provided.

(f)(1) The land capability class, rate of erosion, erosion index (EI), suitability of land for permanent vegetative or water cover, factors for determining the likelihood of improved water quality and adequacy of the planned practice to achieve desired objectives shall be determined by the Soil Conservation Service (SCS), except that no such determination by the SCS shall compel CCC to execute a contract which CCC does not believe will serve the purposes of the program established by this part.

(2) CCC shall consult with the Soil Conservation Service (SCS) for such other technical assistance in the implementation of the ECARP as is determined by CCC to be necessary.

(g) CCC shall consult with the Forest Service (FS) or the State Forestry Agency for such assistance as is determined by CCC to be necessary for developing and implementing conservation plans which include tree planting as the appropriate practice.

(h) CCC may consult with the Extension Service (ES) to coordinate the related information and education program as deemed appropriate to implement the CRP.

§ 1410.3 Definitions.

(a) The terms defined in part 719 of this title shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall be applicable to this part:

Agricultural commodity means any crop planted and produced by annual tilling of the soil or on an annual basis by one trip planters or sugar cane planted or produced in a state or alfalfa and other multiyear grasses and legumes in rotation as approved by the Secretary. For purposes of determining crop history, as relevant to eligibility to enroll land in the program, land shall be considered planted to an agricultural commodity during a crop year if, as determined by CCC, an action of the Secretary prevented land from being planted to the commodity during the crop year;

Alley-cropping means the practice of planting rows of trees surrounded by a strip of vegetative cover, alternated with wider strips of agricultural commodities planted in accordance with a conservation plan of operation approved by the local Conservation District and CCC;

Annual rental payment means, unless the context indicates otherwise, the annual payment specified in the CRP contract which, subject to the availability of funds, is made to a participant to compensate such participant for placing eligible land in the CRP;

Applicant means a person who submits an offer to CCC to enter into a CRP contract;

ASCS means the Agricultural Stabilization and Conservation Service;

Bid means, unless the context indicates otherwise, the per acre rental payment requested by the owner or operator in such owner's or operator's offer to participate in the CRP;

Commodity Credit Corporation (CCC) shall refer to the corporation of that name which is an agency of the United States government maintained within the U.S. Department of Agriculture;

Conservation District (CD) means a subdivision of a State organized pursuant to an applicable State Conservation District Law or in instances where a conservation district does not exist, the State Conservationist of the Soil Conservation Service;

Conservation plan means the document describing and scheduling the practices which must be established and maintained on land placed in the CRP in order to achieve the desired environmental benefits on such land. The conservation plan shall include requirements such as the approved vegetative cover, silvicultural treatments, weed, insect, and pest control necessary for the establishment and maintenance of vegetative cover and any other information required by the Secretary;

Contour grass strip means a vegetation area that follows the contour of the land that is less than 66 feet in width which is to be designated as a contour grass strip by a conservation plan required under this part;

Cost-share payment means the payment made by CCC to assist program participants in establishing the practices required in a contract, except where, in addition, a cost-share payment for maintenance is specifically authorized in this part in which case the term shall also include a maintenance cost-share payment;

CRP contract means the program contract including the applicable contract appendix, conservation plan and the terms of any required easement, if applicable, entered into between CCC and the participant. Such contract shall set forth the terms and conditions for participation in the CRP pursuant to this part;

Deputy Administrator means the ASCS Deputy Administrator for State and County Operations;

Designated 319 areas means areas approved by States under the Clean Water Act, as amended, administered by EPA and designated by the Secretary of Agriculture as eligible for entry into the CRP;

Erosion index means the factor used to determine the erodibility of a soil by dividing the potential average annual rate of erosion for each soil by the predetermined soil loss tolerance (T) value for the soil;

Field means a part of a farm which is separated from the balance of the farm by permanent boundaries such as fences, roads, permanent waterways, woodlands, other similar features, or croplines, except that croplines will be considered to separate fields only in cases where the predominantly eligible cropland and farming practices divide the land into manageable units and it is likely, as determined by CCC, that such cropline is not subject to change during the duration of the contract;

Field windbreak, shelterbelt, and *living snowfence* mean a vegetative barrier with a linear configuration composed of trees or shrubs which are designated as such practices in a conservation plan and which are planted for the purpose of reducing wind erosion, snow control, and energy conservation;

Filterstrip means a strip or area of vegetation 1 to 1.5 chain lengths (66 to 99 feet) in width that will remove sediment, organic matter, nutrients, and other pollutants from surface and subsurface runoff and therefore prevent such pollutants from entering a stream, natural wetland, or other body of water;

Highly erodible land means land which is classified by SCS as:

(i) Being predominantly Land Capability Classes II, III, IV, and V with:

(A) An average annual erosion rate of at least 2T or;

(B) A serious gully erosion problem as determined by the Deputy Administrator; or

(ii) Being predominantly Land Capability Classes VI, VII, or VIII; or

(iii) If trees are to be planted under the conservation plan, eroding at the rate of at least 2T; or

(iv) Having:

(A) An erodibility index equal to or greater than 8 for either wind or water erosion, and

(B) An erosion rate greater than T;

Local ASCS office means the county office of the Agricultural Stabilization and Conservation Service serving the county or combination of counties in the area in which the landowner's farm or ranch is located;

Manageable unit means a part of a field that could be farmed in a normal manner as a self-contained unit;

Participant means an owner or operator or tenant who has entered into a contract;

Permanent vegetative cover means perennial stands of approved combinations of certain grasses, legumes, forbs, and shrubs with a life span of 10 or more years, or trees;

Practice means a conservation or water quality measure agreed to in the conservation plan to accomplish the desired program objectives.

Predominantly highly erodible field means:

(i) Except as provided in paragraph (ii) of this definition, a field in which at least 66⅔ percent of the land in such field is highly erodible;

(ii) A field on which the participant agrees to plant trees, as determined necessary by the Deputy Administrator to achieve overall program goals, which is at least 33⅓ percent highly erodible land.

SCS means the Soil Conservation Service of the United States Department of Agriculture;

Soil Loss Tolerance (T) means the maximum average annual soil loss specified as a tolerance level for a soil in the field office technical guide;

Technical assistance means the assistance provided in connection with the ECARP to owners or operators by a representative of the Department in classifying cropland, developing conservation plans, determining the eligibility of land, and implementing and certifying practices;

Useful life easement means a property interest acquired by CCC pursuant to this part in connection with a CRP contract which requires the maintenance of a practice for the useful life of such practice which period shall be specified by CCC to be 15 or 30 years depending on the practice specified. Practices requiring such easement shall be determined by the Deputy Administrator and shall include practices such as: living snow fences, windbreaks, shelterbelts, permanent wildlife habitat, wildlife corridors and filterstrips devoted to trees and shrubs. All such easements as may be required shall be in favor of the United States or CCC. The granting of such an easement shall be considered to meet the obligation of the contract only if the easement is superior to the rights of all other persons;

Water cover means flooding of land by water in order to develop or restore shallow water areas for wildlife enhancement;

Wellhead means the actual location of a well, as determined by CCC, for water being drawn for public use from the ground.

§ 1410.4 Maximum county acreage.

Except for areas devoted to windbreaks or shelterbelts after November 28, 1990, the maximum acreage which may be placed in the ECARP may not exceed 25 percent of the total cropland in the county of which no more than 10 percent of the cropland in the county may be subject to an easement, unless CCC determines that such action would not adversely affect the local economy of the county. This restriction on participation shall be in addition to any other restriction imposed by law.

§ 1410.5 Performance based upon advice or action of the Department.

The provisions of part 790 of this title, as amended, relating to performance based upon the action or advice of a representative of the Department shall be applicable to this part.

§ 1410.6 Access to land under contract.

Any representative of the Department, or designee thereof, shall have the right of access to:

(a) land which is the subject of an application for a program under this part,

(b) or land which is under contract or otherwise subject to this part and shall have the right to examine records, with respect to such land for the purpose of determining land classification and erosion rates and for the purpose of determining whether there is compliance with the terms and conditions of the ECARP.

§ 1410.7 Division of program payments and provisions relating to tenants and sharecroppers.

Payments received under this part shall be divided in the manner specified in the applicable contract or agreement and CCC shall ensure that producers who would have shared in the risk of producing crops on land subject to such contract or agreement receive treatment deemed to be equitable in accordance with § 1413.150 of this chapter.

§ 1410.8 Payments not subject to claims.

Subject to part 1403 of this chapter, any cost-share or annual payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any creditor, except agencies of the U.S. Government.

§ 1410.9 Assignments.

Any participant who may be entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part, as provided in part 1404 of this chapter, except that assignments may also be made to secure or pay pre-existing indebtedness.

§ 1410.10 Appeals.

(a) Except as provided in paragraph (b) of this section, a participant in a program under this part may obtain a review of any administrative determination rendered under this program in accordance with the administrative appeal regulations at part 780 of this title.

(b) Determinations concerning land classification, erosion rates, or water quality ratings may be reviewed in accordance with procedures established under part 614 of this title or otherwise established by SCS.

§ 1410.11 Scheme and device.

(a) If it is determined by CCC that a participant in a program under this part has employed a scheme or device to defeat the purposes of this part, any part of any program payments otherwise due or paid such participant during the applicable period may be withheld or required to be refunded with interest thereon as determined appropriate by CCC.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of cost-share assistance or land rental payments, and obtaining a payment that otherwise would not be payable.

(c) A new owner or operator or tenant of land subject to this part who succeeds to the responsibilities under this part shall report in writing to CCC any interest of any kind in the land subject to this part that is retained by a previous participant. Such interest shall include a present, future or conditional interest, reversionary interest or any option, future or present, with respect to such land and any interest of any lender in such land where the lender has, will, or can obtain, a right of occupancy to such land or an interest in the equity in such land other than an interest in the appreciation in the value of such land occurring after the loan was made. A failure of full disclosure will be considered a scheme or device under this section.

§ 1410.12 Filing of false claims.

If it is determined by CCC that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant shall be ineligible for payments under this part with respect to the crop year in which the false information or claim was filed. False information or false claims include claims for payment for practices which do not meet the specifications of the applicable conservation plan. Any amounts paid under these circumstances shall be refunded, together with interest as determined by CCC, and any amounts otherwise due such participant shall be withheld.

§ 1410.13 Miscellaneous.

(a) Provisions dealing with controlled substance violations under part 796 of this title are applicable to payments made under this part.

(b) Except as otherwise provided in this part in the case of death, incompetency, or disappearance of any participant, any payment due under this part shall be paid to the participant's successor in accordance with the provisions of part 707 of this title.

(c) Unless otherwise specified in this part, payments under this part shall be subject to the requirements of part 12 of this title concerning highly-erodible land and wetland conservation and payments that otherwise could be made under this

part may be withheld to the extent provided for in part 12 of this title.

(d) Any remedies permitted CCC under this part shall be in addition to any other remedy, including, but not limited to criminal remedies, or actions for damages in favor of CCC, or the United States as may be permitted by law.

Subpart B—Conservation Reserve Program

§ 1410.101 General description.

(a) Under the CRP, the Commodity Credit Corporation (CCC) will enter into contracts with eligible producers to convert eligible land to a conserving use for a minimum of ten years in return for annual rental payments and cost-share assistance.

(b) Except as otherwise provided, a participant may, in addition to any payment under this subpart, receive cost share assistance, rental payments, or tax benefits from a State or subdivision of such State in return for enrolling lands in CRP.

§ 1410.102 Eligible persons.

In order to be eligible to enter into a CRP contract in accordance with this part, a person must be an owner or operator or tenant of eligible cropland and—

(a) If an operator of eligible cropland, must have operated such cropland for at least 3 years prior to the close of the applicable signup period and must provide satisfactory evidence that such person will be in control of such cropland for the full term of the CRP contract period; or

(b) If an owner of eligible cropland, must have owned such cropland for at least 3 years prior to the close of the applicable signup period, unless:

(1) The new owner acquired such cropland by will or succession as a result of the death of the previous owner;

(2) The only ownership change in the three year period occurred due to foreclosure on the land and the owner of the land, immediately before the foreclosure, exercises a timely right of redemption from the mortgage holder in accordance with state law;

(3) As determined by the Deputy Administrator, the circumstances of the requisition are such as present adequate assurances that the new owner of such cropland did not acquire such cropland for the purpose of placing it in the CRP; or

(c) If a tenant, the tenant is a participant with an eligible owner or operator.

§ 1410.103 Eligible land.

(a) Except as otherwise provided in this section, in order to be eligible to be placed in the CRP, land must—

(1) Have been annually planted or considered planted to an agricultural commodity in 2 of the 5 crop years, from 1986 through 1990;

(2) Be physically possible to be planted in a normal manner, at the time of enrollment, to an agricultural commodity;

(3) Be a predominantly highly erodible field; and

(4) If in a redefined field, be a manageable unit which meets the minimum acreage requirements, as determined by the Deputy Administrator, for the county. This requirement shall not apply for areas, as specified in the contract, to be used for permanent wildlife habitat, filterstrips, contour grass strips, sod waterways, field windbreaks, shelterbelts, living snowfences, or vegetation on salinity producing areas.

(b) A field or portion of a field determined to be suitable for use as a filter strip may be eligible to be placed in the CRP, even if it does not meet the requirement of paragraph (a)(3) of this section. The participant must agree to grow permanent grass, forbs, shrubs or trees on such field or portion of such field. A field or portion of a field may be considered to be suitable for use as a filter strip only if it—

(1) Otherwise meets the requirements of paragraph (a) of this section;

(2) Is located adjacent to a stream having perennial flow, other waterbody of a permanent nature (such as a lake, pond, wetlands and sinkhole), or seasonal stream, or wetlands excluding such areas as gullies or sod waterways;

(3) Is capable, when permanent grass, forbs, shrubs or trees are grown, of substantially reducing sediment that otherwise would be delivered to the adjacent stream or waterbody; and

(4) Is 1.0 to 1.5 chain lengths (66 to 99 feet) in width. Such width may be exceeded, to the extent necessary to meet SCS Field Office Technical Guide criteria, to accomplish the desired environmental effect.

(c) A field which has evidence of scour erosion caused by out-of-bank flows of water, as determined by SCS, may be eligible to be placed in the CRP, even if the field does not meet the requirement of paragraph (a)(3) of this section.

(1) In order for land to be eligible for enrollment in the CRP under paragraph (c) of this section, such land must otherwise meet the requirements of paragraph (a) of this section.

(2) Such land must in addition:

(i) Be expected to flood a minimum of once every 10 years; and

(ii) Have evidence of damage as a result of such scour erosion.

(3) To the extent practicable, only cropland areas of a field may be enrolled in the CRP under this paragraph. The entire cropland area of an eligible field may be enrolled if:

(i) The size of the field is 9 acres or less; or,

(ii) More than one third of the cropland in the field is land which lies between the water source and the inland limit of the scour erosion.

(4) If the full field is not eligible for enrollment under this paragraph that portion of the field eligible for enrollment shall be that portion of the cropland between the water body and the inland limit of the scour erosion together with, as determined by the Deputy Administrator, additional areas which would otherwise be unmanageable and would be isolated by the eligible areas.

(5) Cropland approved for enrollment under this paragraph shall be planted to an appropriate tree species approved by SCS, unless tree planting is determined to be inappropriate by SCS, in which case the eligible cropland shall be devoted to another acceptable permanent vegetative cover approved by SCS and the Deputy Administrator.

(d) Notwithstanding paragraph (a)(3) of this section, the following land may also, as determined by the Deputy Administrator, be considered eligible for the CRP under the provisions of this subpart, provided that all other provisions of paragraph (a) of this section are met.

(1) Land contributing to the degradation of water quality or posing an on-site or off-site environmental threat to water quality if such land remains in production so long as water quality objectives, with respect to such land, cannot be obtained under the Agricultural Water Quality Incentives Program (AWQIP).

(2) Land subject to a useful life easement which is devoted to living snowfences, windbreaks, wildlife habitat, shelterbelts or filterstrips with trees or shrubs.

(3) Land subject to a useful life easement that is devoted to newly-created permanent grass waterways, or contour grass sod strips created after November 28, 1990, which are established and maintained according to an approved conservation plan;

(4) Non-irrigated or irrigated cropland which produce, as determined by the Deputy Administrator, saline seeps, or which are functionally-related to such

saline seeps, or where a rising water table contributes to increased levels of salinity at or near the ground surface. Any land which qualifies for the CRP under this subparagraph may be made subject to a useful life easement established to salt tolerant vegetation;

(e) Federal lands, lands acquired by an agency of the Federal Government, or by a quasi-federal entity are ineligible for the CRP.

(f) Land otherwise eligible for the CRP shall not be eligible if the land is:

(1) Subject to a deed or other restriction prohibiting the production of agricultural commodities, unless otherwise approved by the Deputy Administrator; or

(2) Farmed wetland which may be eligible for the Wetlands Reserve Program under subpart C of this part.

§ 1410.104 Duration of contracts.

(a) Except as provided in paragraph (b) of this section, contracts under this subpart shall be 10 years in duration.

(b) In the case of land devoted to hardwood trees, shelterbelts, windbreaks, or wildlife corridors under the original terms of a contract subject to this subpart or for land devoted to such use under a contract modified under § 1410.107, the participant may specify the duration of the contract. Such contracts must be at least 10 years and no more than a total of 15 years in length.

§ 1410.105 Conservation priority areas.

(a) The watershed areas of the Chesapeake Bay region, Great Lakes region, and Long Island Sound region shall be considered as conservation priority areas for CRP purposes. The Deputy Administrator may designate other areas as conservation priority areas.

(b) State water quality agencies may submit an application for designation of other areas to the Deputy Administrator through the State ASC Committee.

(c) Watersheds shall be eligible for designation as a priority area only if the watershed has actual significant adverse water quality or habitat impacts related to activities of agricultural production.

(d) Conservation priority area designations expire after 5 years unless redesignated, except they may be withdrawn:

(1) Upon application by the appropriate State water quality agency; or

(2) By the Secretary, if such areas no longer contain actual and significant adverse water quality or habitat impacts in association with agricultural production activities.

(e) In those areas designated as priority areas, under this section, special emphasis will be placed to maximize water quality and habitat benefits of the implementation of the CRP by promoting a significant level of enrollment of lands within such designated watersheds in the program as determined, by the Deputy Administrator, to be appropriate and consistent with the purposes of the program.

§ 1410.106 Alley-cropping.

(a) Alley-cropping on CRP land may be permitted by CCC if:

(1) The land is planted to, or converted to, hardwood trees in accordance with § 1410.107;

(2) Agricultural commodities are planted in accordance with an approved conservation plan in close proximity to such hardwood trees;

(3) The owner and operator of such land, agree to implement appropriate conservation measures on such land.

(b) CCC may solicit bids for alley-cropping permission for CRP land. Annual rental payments for the term of any contract modified under this section shall be reduced by at least 50 percent of the original amount of the total rental payment in the original contract and total annual rental payments over the term of any contract modified under this section shall not exceed the total annual rental payments specified in the original contract.

(c) The actual reduction in rental payment will be determined by CCC, based upon criteria, such as percentage of the total acreage that will be available for cropping and projected returns to the producer from such cropping.

(d) The area available for cropping will be chosen according to established technical guidelines and will be farmed in accordance with an approved conservation plan so as to minimize erosion and degradation of water quality during those years when the areas are devoted to an agricultural commodity.

§ 1410.107 Conversion to trees.

An owner or operator who has entered into a contract under Part 704 of this title as of November 28, 1990, may elect to convert areas of highly erodible cropland, subject to such contract, which are devoted to permanent cover, from such cover to hardwood trees (including alley cropping where permitted by CCC), windbreaks, shelterbelts, or wildlife corridors.

(a) With respect to any contract modified under this section, the participant may elect to extend such contract to a term not to exceed 15 years.

(b) With respect to any contract modified under this section in which such areas are converted to windbreaks, shelterbelts, or wildlife corridors, the owner of such land must provide a useful life easement on such land to CCC for the useful life of such plantings.

(c) CCC shall, as it determines appropriate and in the public interest, pay up to 50 percent of the eligible cost of establishing new conservation measures authorized under this section except that the total cost share paid with respect to such contract, including a cost share paid when the original cover was established, may not exceed the amount which CCC would have paid had such land been originally devoted to such new conservation measures.

(d) With respect to any contract modified under this section, the participant must participate in the Forest Stewardship Program.

§ 1410.108 Restoration of wetlands.

An owner or operator who has entered into a contract under part 704 of this title as of November 28, 1990, on land that is suitable for restoration to wetlands or that was restored to wetlands while under such contract, may, if approved by CCC, elect to transfer such eligible acres subject to such contract, which are devoted to an approved cover, from such contract to the wetland reserve program; provided that all funds or benefits paid under the CRP contract shall be refunded with interest unless the application for the Wetlands Reserve Program is made prior to October 1, 1992;

(a) Contracts may only be converted under this section if:

(1) Such areas are determined suitable for the wetlands reserve program;

(2) Such owner or operator provides an easement in accordance with subpart C of this part covering such areas;

(3) There is a high probability, as determined by CCC, of successful restoration of such areas; and

(4) The restoration of such area otherwise meets the requirements of subpart C of this part.

(b) An owner or operator who has entered into a contract under part 704 of this letter may, if approved by CCC, restore suitable acres to wetlands while under such contract without cost-share assistance under the CRP since water is an approved cover. The approved restoration shall become a part of the conservation plan for the contracted area.

§ 1410.109 Obligations of participant.

All participants subject to a CRP contract must agree to:

(a) Carry out the terms and conditions of such CRP contract;

(b) Implement the conservation plan which is part of such contract in accordance with the schedule of dates included in such conservation plan unless CCC determines that the participant cannot fully implement the conservation plan for reasons beyond the participant's control;

(c) Establish temporary vegetative cover when required by the conservation plan or if, as determined by CCC, the permanent vegetative cover cannot be timely established;

(d) Reduce the aggregate total of crop acreage bases, allotments, and quotas for the contract period for each farm which contains land subject to such CRP contract by an amount based upon the ratio between the acres in the CRP contract and the total cropland acreage on such farm. Crop acreage bases reduced during the contract period shall be returned at the end of the contract period in the same amounts as would apply had the land not been enrolled in the CRP unless CCC approves, pursuant to § 1410.117, an extension of such protection;

(e) Not produce an agricultural commodity on highly erodible land, in a county which has not met or exceeded the acreage limitation under § 1410.4, which was acquired on or after November 28, 1990 unless such land, as determined by CCC, has a history in the most recent five year period of producing an agricultural commodity other than forage crops;

(f) Comply with all requirements of part 12 of this title;

(g) Not allow grazing, harvesting, or other commercial use of any crop from the cropland subject to such contract except for those periods of time in accordance with instructions issued by CCC in response to drought or other similar emergency;

(h) Establish and maintain the required vegetative or water cover and the required practices on the land subject to such contract and take other actions that may be required by CCC to achieve the desired environmental benefits and to maintain the productive capability of the soil throughout the CRP contract period;

(i) Comply with noxious weed laws of the applicable State or local jurisdiction on such land;

(j) Control on land subject to such contract all weeds, insects, pests and other undesirable species to the extent necessary, taking into consideration the needs of water quality and wildlife, as determined by CCC; and

(k) Be jointly and severally responsible for compliance with such contract and the provisions of this subpart and for any refunds or payment adjustments which may be required for violations of any of the terms and conditions of the CRP contract and provisions of this subpart.

§ 1410.110 Obligations of the Commodity Credit Corporation.

CCC shall, subject to the availability of funds:

(a) Share the cost with participants of establishing eligible practices specified in the conservation plan at the levels and rates of cost-sharing determined in accordance with the provisions of this subpart;

(b) Pay to the participant for a period of years not in excess of the contract period an annual rental payment in such amounts as may be specified in the CRP contract; and

(c) Provide such technical assistance as may be necessary to assist the participant in carrying out the CRP contract; and

(d) Permit limited fall and winter grazing of grass waterways on CRP land where the grazing is incidental to the gleaning of crop residues on fields where contracted land is located, but only with prior approval of CCC and in exchange for an applicable reduction in the annual rental payment, as determined appropriate by the Deputy Administrator.

§ 1410.111 Conservation plan.

(a) The applicant, in consultation with the SCS and the local conservation district, shall develop the conservation plan for the land to be entered in CRP.

(b) The practices included in the conservation plan and agreed to by the participant must achieve the reduction in erosion necessary to maintain the productive capability of the soil, improvement in water quality, protection of a public well head or other environmental benefit as applicable.

(c) If applicable, a tree planting plan shall be developed and included in the conservation plan. Such tree planting plan may allow up to 3 years to complete plantings if 10 or more acres of hardwood trees are to be established.

(d) All conservation plans shall be subject to the approval of CCC.

§ 1410.112 Eligible practices.

(a) Eligible practices are those practices specified in the conservation plan that meet all quantity and quality standards needed to:

(1) Establish permanent vegetative cover, including introduced or native species of grasses and legumes, forest trees, permanent wildlife habitat, field windbreaks, and shallow water areas for wildlife,

(2) Meet other environmental benefits, as applicable, for the contract period; and

(3) Accomplish other purposes of the program.

(b) Water cover is an eligible practice if approved by CCC for the enhancement of wildlife or otherwise, except that such water cover shall not include ponds for the purpose of watering livestock, irrigating crops, or raising fish for commercial purposes.

§ 1410.113 Signup.

Offers for contracts shall be submitted only during public signup periods as announced periodically by CCC, except that CCC may hold a continuous signup for land to be devoted to particular uses, as CCC deems desirable.

§ 1410.114 Acceptability of offers.

(a) Producers will submit bids for the amounts they are willing to accept to enroll their acreage in the CRP. The bids will, to the extent practicable, be evaluated on a competitive basis in which the bids selected will be those where the greatest environmental benefits are generated for the Federal dollars expended.

(b) In evaluating contract offers, different factors, as determined by CCC, may be established from time to time for priority purposes to accomplish the goals of the program. Such factors may include, but are not limited to:

(1) Surface water quality;

(2) ground water quality;

(3) soil productivity;

(4) conservation compliance considerations;

(5) tree planting;

(6) 319 area designations; and

(7) conservation priority area designation for selection.

§ 1410.115 CRP contract.

(a) In order to enroll land in the CRP, the participant must enter into a contract with CCC.

(b) The CRP contract will be comprised of:

(1) The terms and conditions for participation in the CRP;

(2) The conservation plan; and

(3) Any other materials or agreements determined necessary by CCC.

(c)(1) In order to enter into a CRP contract, the applicant must submit an offer to participate at the local ASCS

office during the applicable signup period.

(2) An offer to enroll land in the CRP shall be irrevocable for such period as is determined and announced by CCC.

(3) The applicant shall be liable to CCC for liquidated damages if the applicant revokes an offer during the period in which the offer is irrevocable, except that such irrevocable period shall not be applicable for the first signup period under this subpart, and

CCC may waive payment of such liquidated damages if CCC determines that the assessment of such damages, in a particular case, is not in the best interest of CCC.

(d) The CRP contract must, within the dates established by CCC, be signed by:

(1) The applicant; and

(2) The owners of the cropland to be placed in the CRP, if applicable.

(e) The Deputy Administrator or designee is authorized to approve CRP contracts on behalf of CCC.

§ 1410.116 Contract modifications.

(a) By mutual agreement between CCC and the participant, a CRP contract may be modified in order to:

(1) Decrease acreage in the CRP;

(2) Permit the production of an agricultural commodity during a crop year on all or part of the land subject to the CRP contract;

(3) Facilitate the practical administration of the CRP; or

(4) Accomplish the goals and objectives of the CRP, as determined by the Deputy Administrator.

(b) CCC may modify CRP contracts to add, delete, or substitute practices when:

(1) The installed practice failed to adequately provide for the desired environmental benefit through no fault of the participant; or

(2) The installed measure deteriorated because of conditions beyond the control of the participant; and

(3) Another practice will achieve at least the same level of environmental benefit.

§ 1410.117 Extended base protection.

(a) In the final year of the contract or renewable period, participants may, subject to approval by CCC, request to extend the preservation of cropland base and allotment history for 5 years, without payment. Such approval may be given by CCC only if participants agree to continue for that period to abide by the terms and conditions which applied to the relevant contract relating to the conservation of the property for the term in which payments were to be made.

(b) Where such an extension is approved, no additional cost share, annual rental or bonus payment shall be made that would not have been made under the original contract for its original term.

(c) Haying and grazing of the acreage subject to such an extension may be permitted during the extension period, except during any consecutive 5-month period between April 1 and October 31 of any year as shall be established by the State committee. In the event of a natural disaster, however, CCC may permit unlimited haying and grazing of such acreage.

(d) In the event of a violation of any CRP contract extended under this section, CCC may reduce or terminate the amount of cropland base and allotment history otherwise preserved under the contract or under an extension of the contract.

§ 1410.118 Cost-share payments.

(a) Cost-share payments shall be made available upon a determination by CCC that an eligible practice, or an identifiable unit thereof, has been established in compliance with the appropriate standards and specifications.

(b) Except as otherwise provided for in this subpart, cost-share payments may be made under the CRP only for the establishment or installation of an eligible practice.

(c) Except as provided in paragraph (d) of this section, cost-share payments shall not be made to the same owner or operator on the same acreage for any eligible practices which have been previously established, and for which such owner or operator has received cost-share assistance from the Department or other Federal agency.

(d) Except as provided for under § 1410.107, cost-share payments may be authorized for the replacement or restoration of practices for which cost-share assistance has been previously allowed under the CRP, but only if:

(1) Replacement or restoration of the practice is needed to achieve adequate erosion control, enhanced water quality, or increased protection of public wellheads; and

(2) The failure of the original practice was due to reasons beyond the control of the participant.

(e) The cost-share payment made to a participant shall not exceed the participant's actual contribution to the cost of establishing the practice and the amount of the cost-share may not be an amount which, when added to assistance from other sources, exceeds the cost of the practices.

(f) In the case of land devoted to hardwood trees, windbreaks, shelterbelts, or wildlife corridors under a contract subject to this subpart or in the case of land converted to such use under § 1410.107, CCC shall pay up to 50 percent of appropriate costs, as determined by CCC, to the participant for maintaining such plantings, including the cost of replanting if such plantings are lost for reasons beyond the control of the participant, during not less than the 2-year nor more than the 4-year period commencing on the date of such plantings.

(g) CCC shall not make cost-share payments with respect to a CRP contract if any other Federal cost-share assistance has been, or is being, made with respect to the establishment of the required practice on land subject to such contract.

§ 1410.119 Levels and rates for cost-share payments.

(a) CCC may not pay more than 50 percent of the actual or average cost of establishing eligible practices specified in the conservation plan except that CCC shall allow cost-shares for maintenance costs to the extent required by § 1410.118(f) and CCC shall determine the period and amount of such cost-shares.

(b) The average cost of performing a practice shall be determined by CCC. Recommendations of the State and county Conservation Review Groups as provided for under § 701.2 (a) and (f) of this title shall be considered in determining such cost. Such cost may be the average cost in a State, a county, or a part of a county or counties as determined by the Deputy Administrator.

§ 1410.120 Annual rental payments.

(a) Subject to the availability of funds, annual rental payments shall be made in such amount and in accordance with such time schedule as may be agreed upon and specified in the CRP contract.

(b) The annual rental payment shall be divided among the participants on a single contract in the manner agreed upon in such contract.

(c) The maximum amount of rental payments which a person may receive under the CRP for any fiscal year shall not exceed $50,000. The regulations set forth at parts 1497 and 1498 of this chapter shall be applicable in making certain eligibility and "person" determinations as they apply to payment limitations under this part.

(d) In the case of a contract succession, annual rental payments shall be prorated between the predecessor and the successor participants based on the actual days of ownership of the property as reflected in

applicable appropriately filed land records.

(e) CCC may reject any and all offers received from applicants who had previously entered into CRP contracts with CCC if the total annual rental payments due under such prior contracts (excluding contracts entered into in accordance with § 1410.123) plus the total annual rental payments called for in the offer exceed $50,000.

§ 1410.121 Method of payment.

Except as provided in § 1410.122, payments made by CCC under this part may be made in cash, in kind, in commodity certificates, or in any combination of such methods of payment in accordance with part 1470 of this chapter, unless otherwise specified by CCC.

§ 1410.122 State enhancement program payments.

For contracts to which a State, political subdivision, or agency thereof has succeeded in connection with an approved conservation reserve enhancement program, payments shall be made in the form of cash only. The provisions that limit the amount of payment per year a person may receive under this subpart shall not be applicable to payments received by such State, political subdivision, or agency thereof in connection with agreements entered into under such program carried out by such State, political subdivision, or agency thereof which has been approved by the Secretary.

§ 1410.123 Transfer of land.

(a)(1) If a new owner or operator purchases or obtains the right and interest in, or right to occupancy of, the land subject to a CRP contract, such new owner or operator, upon the approval of CCC, may become a participant to a new CRP contract with CCC with respect to such transferred land.

(2) With respect to the transferred land, if the new owner or operator becomes a successor to the existing CRP contract, the new owner or operator shall assume all obligations under the CRP contract of the previous participant;

(3) The following provisions shall be applicable if the new owner or operator becomes a successor to a CRP contract with CCC:

(i) Cost-share payments shall be made to the participant, past or present who established the practice; and

(ii) Annual rental payments to be paid during the fiscal year when the land was transferred shall be divided between the new participant and the previous participant in the manner specified in § 1410.120.

(b) If a participant transfers all or part of the right and interest in, or right to occupancy of, land subject to a CRP contract and the new owner or operator does not become a successor to such contract within 60 days of such transfer, such contract shall be terminated with respect to the affected portion of such land and the original participant:

(1) Must forfeit all rights to any future payments with respect to such acreage; and

(2) Unless, as approved by CCC where the new owner is a Federal agency that agrees to abide by the terms and conditions of the terminated contract, must refund all or part of the payments made with respect to such contract plus interest thereon, as determined by CCC, and shall pay liquidated damages as provided for in such contract. CCC, in its discretion, may permit the amount to be repaid to be reduced to the extent that such a reduction will not impair program operations and is deemed to be in the public interest. Provided however, no refund of rental payments and cost sharing payments shall be required from a participant who is otherwise in full compliance with the CRP contract when the land is purchased by or for the United States Fish and Wildlife Service.

(c) Federal agencies in acquiring property, by foreclosure or otherwise, that contains CRP contract acreage, cannot be a party to the contract by succession. However, through an addendum to the CRP contract, if the current operator of the property is one of the participants on such contract, such operator may, as permitted by CCC, continue to receive payments provided for in such contract so long as:

(1) The property is maintained in accordance with the terms of the contract;

(2) Such operator continues to be the operator of the property; and

(3) Ownership of the property remains with such federal agency.

§ 1410.124 Violations.

(a)(1) If a participant fails to carry out the terms and conditions of a CRP contract, CCC may terminate the CRP contract.

(2) If the CRP contract is terminated by CCC in accordance with this subsection:

(i) The participant shall forfeit all rights to further payments under such contract and refund all payments previously received together with interest; and

(ii) Pay liquidated damages to CCC in such amount as specified in such contract.

(b) If CCC determines such failure does not warrant termination of such contract, CCC may grant relief as CCC deems appropriate.

(c) CCC may also terminate a CRP contract if the participant agrees to such termination and CCC determines such termination to be in the public interest.

(d) CCC may reduce a demand for a refund under this section to the extent CCC determines that such relief would be appropriate and will not deter the accomplishment of the goals of the program.

§ 1410.125 Executed CRP contract not in conformity with regulations.

If, after a CRP contract is approved by CCC, it is discovered that such CRP contract is not in conformity with the provisions of this part, a modification of such contract may be made by mutual agreement. If the parties to such contract cannot reach agreement with respect to such modification, the CRP contract shall be terminated and all payments paid or payable under such contract shall be forfeited or refunded to CCC, except as may otherwise be allowed by CCC.

Signed this 12th day of April 1991 in Washington, DC.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service. Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-9075 Filed 4-16-91; 10:22 am]

BILLING CODE 3410-05-M

DEPARTMENT OF COMMERCE

15 CFR Parts 8a, 29a and 29b

[Docket No. 910222-1022]

RIN 0605-AA07

Audit Requirements for Institutions of Higher Education and Other Nonprofit Organizations

AGENCY: Department of Commerce.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of Commerce is implementing Office of Management and Budget (OMB) guidance provided in Circular A-133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations." As a result of this interim final rule, institutions of higher education and other nonprofit organizations that receive Federal assistance are required to periodically perform audits and submit the audit reports to the Federal government. This

interim final rule establishes uniform audit requirements applicable to these organizations and defines the Department's responsibilities for implementing and monitoring these requirements.

DATES: *Effective:* The provisions of this interim final rule are effective April 19, 1991, and shall apply to audits of nonprofit institutions for fiscal years that begin on or after May 20, 1991.

Comments: Comments must be received by May 20, 1991.

Applicability: See **SUPPLEMENTARY INFORMATION** for background on how the Department of Commerce has implemented the provisions of OMB Circular A–133 previously.

ADDRESSES: Comments may be mailed to Barbara Lambis, Director, Office of Federal Assistance, U.S. Department of Commerce, HCHB room 6054, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Barbara Lambis, (202) 377–5817.

SUPPLEMENTARY INFORMATION: On November 10, 1988, OMB published a notice in the **Federal Register** (53 FR 45744) requesting comments on the proposed OMB Circular A–133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations." Interested parties were invited to submit comments to OMB by January 9, 1989. OMB received almost 100 comments from Federal agencies, State and local governments, universities, professional organizations, nonprofit organizations, and others. These comments were considered in developing the final Circular A–133, published in the **Federal Register** on March 16, 1990 (55 FR 10019).

Since April 4, 1990, the Department of Commerce has required adherence to the provisions of OMB Circular A–133 by incorporating it in all financial assistance agreements with universities and other nonprofit organizations. The Department of Commerce is now issuing these requirements as an interim final rule.

OMB is expected to issue a supplement to OMB Circular A–133, which will be entitled "Compliance Supplement for Single Audits of Educational Institutions and Other Nonprofit Organizations." Once it is issued, this interim final rule will be amended to refer auditors to the supplement for additional guidance in conducting internal control reviews as required under § 29b.16(b) and compliance reviews as required under § 29b.16(c). In addition, 15 CFR part 8a, "Audit Requirements for State and Local Governments," is redesignated to keep the Department's audit requirements together. The new Part 8a is reserved for future use.

This is not a major rule within the meaning of section 1 of Executive Order 12291. It will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because this rule relates to public property, loans, grants, benefits and contracts, it is exempt from the requirements of notice and opportunity to comment and the 30-day delayed effective date (5 U.S.C. 553(a)(2)). No other law requires that notice and opportunity for comment on this interim final rule be given.

Since notice and opportunity to comment are not required to be given for this interim final rule under section 553 of the Administrative Procedure Act or any other law, no initial or final Regulatory Flexibility Analysis has to be or will be prepared for purposes of the Regulatory Flexibility Act.

Although this interim final rule is exempt from the 30-day delayed effective date and is being issued in interim form, effective upon publication in the **Federal Register**, public comments are invited and should be sent to the address listed in the "**ADDRESSES**" section above. Comments must be received within 30 days of this publication to be considered in issuing the final rule.

This interim final rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Paperwork Reduction Act

This interim final rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by OMB under control number 0991–0003. The public reporting burden for this collection of information is estimated to average 5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Federal Assistance, U.S. Department of Commerce, HCHB room 6054, 14th Street and Constitution Avenue, NW., Washington, DC 20230; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20530 (Attn: Paperwork Reduction Project Number 0991–0003).

List of Subjects in 15 CFR Parts 29a and 29b

Administrative practice and procedures, Debarment and suspension (nonprocurement), Drug abuse, Grant programs.

PART 8a—[REDESIGNATED AS PART 29A AND RESERVED]

PART 29a—[REDESIGNATED FROM PART 8a]

For the reasons set out in the preamble, title 15 of the Code of Federal Regulations, subtitle A is amended by redesignating part 8a as part 29a, reserving part 8a for future use, and adding part 29b to read as follows:

PART 29b—AUDIT REQUIREMENTS FOR INSTITUTIONS OF HIGHER EDUCATION AND OTHER NONPROFIT ORGANIZATIONS

Sec.

Authority: 5 U.S.C. 301.

§ 29b.1 Purpose.

This part establishes audit requirements and defines the Department's responsibilities for implementing and monitoring such requirements for institutions of higher education and other nonprofit organizations receiving Federal awards. The provisions of this part are effective April 19, 1991, and shall apply to audits

of nonprofit institutions for fiscal years that begin on or after May 20, 1991.

§ 29b.2 Background.

This part sets forth audit requirements pursuant to Office of Management and Budget (OMB) Circular A–133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations," which superseded the audit provisions of Attachment F, subparagraph 2h, of OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations."

§ 29b.3 Policy.

This part does not exempt institutions of higher education and other nonprofit organizations from maintaining records of financial assistance or from providing Federal agencies with access to such records as required by Federal law or OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations."

§ 29b.4 Definitions.

For purposes of this part, the following definitions apply:

Award means financial assistance, and Federal cost-type contracts used to buy services or goods for the use of the Federal Government. It includes awards received directly from the Federal agencies or indirectly through recipients. It does not include procurement contracts to vendors under grants or contracts, used to buy goods or services. Audits of such vendors shall be covered by the terms and conditions of the contract.

Cognizant agency means the Federal agency assigned by OMB to carry out the responsibilities described in § 29b.6.

Coordinated audit approach means an audit wherein the independent auditor, and other Federal and non-Federal auditors consider each other's work in determining the nature, timing, and extent of his or her own auditing procedures. A coordinated audit must be conducted in accordance with "Government Auditing Standards," and meet the objectives and reporting requirements set forth in § 29b.15(b) and 29b.18, respectively. The objective of the coordinated audit approach is to minimize duplication of audit effort, but not to limit the scope of the audit work so as to preclude the independent auditor from meeting the objectives set forth in § 29b.15(b) or issuing the reports required in § 29b.18 in a timely manner.

Federal agency has the same meaning as the term 'agency' in section 551(1) of title 5, United States Code.

Federal financial assistance means assistance provided by a Federal agency to a recipient or sub-recipient to carry out a program. Such assistance may be in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, or other non-cash assistance.

(1) Such assistance does not include direct Federal cash assistance to individuals.

(2) Such assistance does include awards received directly from Federal agencies, or indirectly when sub-recipients receive funds identified by recipients as Federal funds.

(3) The granting agency is responsible for identifying the source of funds awarded to recipients. Recipients are responsible for identifying the source of funds awarded to sub-receipts.

Generally accepted accounting principles has the meaning specified in the "Government Auditing Standards."

Independent auditor means:

(1) A Federal, State or local government auditor who meets the standards specified in the "Government Auditing Standards;" or

(2) A public accountant who meets such standards.

Internal control structure means the policies and procedures established to provide reasonable assurance that:

(1) Resource use is consistent with laws, regulations, and award terms;

(2) Resources are safeguarded against waste, loss, and misuse; and

(3) Reliable data is obtained, maintained, and fairly disclosed in reports.

Major program means an individual award or a number of awards in a category of Federal assistance or support for which total expenditures are the larger of three percent of total Federal funds expended or $100,000, on which the auditor will be required to express an opinion as to whether the major program is being administered in compliance with laws and regulations. Each of the following categories of Federal awards shall constitute a major program where total expenditures are the larger of three percent of total Federal funds expended or $100,000:

(1) Research and Development,

(2) Student Financial Aid, or

(3) Individual awards not in the student aid or research and development category.

Management decision means the evaluation by the management of an establishment of the findings and recommendations included in an audit report and the issuance of a final decision by management concerning its response to such findings and recommendations, including actions concluded to be necessary.

Nonprofit institution means any corporation, trust, association, cooperative or other organization which:

(1) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;

(2) Is not organized primarily for profit; and

(3) Uses its net proceeds to maintain, improve, and/or expand its operations.

The term *nonprofit institutions* includes institutions of higher education, except those institutions that are audited as part of single audits in accordance with part 29a, "Audit Requirements for State and Local Governments." The term does not include hospitals which are not affiliated with an institution of higher education, or State and local governments and Indian tribes covered by part 29a.

Oversight agency means the Federal agency that provides the predominant amount of direct funding to a recipient not assigned a cognizant agency, unless no direct funding is received. Where there is no direct funding, the Federal agency with the predominant indirect funding will assume the general oversight responsibilities as set forth in § 29b.7.

Recipient means an organization receiving financial assistance to carry out a program directly from Federal agencies.

Research and development includes all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other nonprofit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

Student Financial Aid includes those programs of general student assistance in which institutions participate, such as those authorized by Title IV of the Higher Education Act of 1965 which is administered by the U.S. Department of Education and similar programs provided by other Federal agencies. It does not include programs which provide fellowships or similar awards to students on a competitive basis, or for specified studies or research.

Sub-recipient means any person or government department, agency, establishment, or nonprofit organization that receives Federal financial assistance to carry out a program through a primary recipient or other sub-recipient, but does not include an individual that is a beneficiary of such a program. A sub-recipient may also be a direct recipient of Federal awards under other agreements.

Vendor means an organization providing a recipient or sub-recipient with generally required goods or services that are related to the administrative support of the Federal assistance program.

§ 29b.5 Audit of nonprofit institutions.

(a) Requirements based on awards received.

(1) Nonprofit institutions that receive $100,000 or more a year in Federal awards shall have an audit made in accordance with the provisions of this part. However, nonprofit institutions receiving $100,000 or more but receiving awards under only one program have the option of having an audit of their institution prepared in accordance with the provisions of this part or having an audit made of the one program. For prior or subsequent years, when an institution has only loan guarantees or outstanding loans that were made previously, the institution may be required to conduct audits for those programs, in accordance with regulations of the Federal agencies providing those guarantees or loans.

(2) Nonprofit institutions that receive at least $25,000 but less than $100,000 a year in Federal awards shall have an audit made in accordance with this part or have an audit made of each Federal award, in accordance with Federal laws and regulations governing the programs in which they participate.

(3) Nonprofit institutions receiving less than $25,000 a year in Federal awards are exempt from Federal audit requirements, but records must be available for review by appropriate officials of the Federal grantor agency or subgranting entity.

(b) Oversight by federal agencies.

(1) To each of the larger nonprofit institutions, OMB will assign a Federal agency as the cognizant agency for monitoring audits and ensuring the resolution of audit findings that affect the programs of more than one agency.

(2) Smaller institutions not assigned a cognizant agency will be under the general oversight of the Federal agency that provides them with the most funds.

(3) Assignments to Federal cognizant agencies for carrying out responsibilities in this section are set forth under a supplement to OMB Circular A–133.

(4) Federal Government-owned, contractor-operated facilities at institutions or laboratories operated primarily for the Government are not included in the cognizance assignments. These will remain the responsibility of the contracting agencies. The listed assignments cover all of the functions in this part unless otherwise indicated. OMB coordinates changes in agency assignments.

§ 29b.6 Cognizant agency responsibilities.

The cognizant agency shall:

(a) Ensure that audits are made and reports are received in a timely manner and in accordance with the requirements of this part;

(b) Provide technical advice and liaison to institutions and independent auditors;

(c) Obtain or make quality control reviews of selected audits made by non-Federal audit organizations, and provide the results, when appropriate, to other interested organizations;

(d) Promptly inform other affected Federal agencies and appropriate Federal law enforcement officials of any reported illegal acts or irregularities. A cognizant agency should also inform State or local law enforcement and prosecuting authorities, if not advised by the recipient, of any violation of law within their jurisdiction;

(e) Advise the recipient of audits that have been found not to have met the requirements set forth in this part. In such instances, the recipient will work with the auditor to take corrective action. If corrective action is not taken, the cognizant agency shall notify the recipient and Federal awarding agencies of the facts and make recommendations for follow-up action. Major inadequacies or repetitive substandard performance of independent auditors shall be referred to appropriate professional bodies for disciplinary action;

(f) Coordinate, to the extent practicable, audits or reviews made for Federal agencies that are in addition to the audits made pursuant to this part, so that the additional audits or reviews build upon audits performed in accordance with this part;

(g) Ensure the resolution of audit findings that affect the programs of more than one agency;

(h) Seek the views of other interested agencies before completing a coordinated program; and

(i) Help coordinate the audit work and reporting responsibilities among independent public accountants, State auditors, and both resident and non-resident Federal auditors to achieve the most cost-effective audit.

§ 29b.7 Oversight agency responsibilities.

An oversight agency shall provide technical advice and counsel to institutions and independent auditors when requested by the recipient. The oversight agency may assume all or some of the responsibilities normally performed by a cognizant agency.

§ 29b.8 Recipient responsibilities.

A recipient that receives a Federal award and provides $25,000 or more of it during its fiscal year to a sub-recipient shall:

(a) Ensure that nonprofit sub-recipients that receive $25,000 or more have met the audit requirements of this part, and that sub-recipients subject to part 29a, "Audit Requirements for State and Local Governments," have met the audit requirements of that part;

(b) Ensure that appropriate corrective action is taken within six months after receipt of the sub-recipient audit report in instances of noncompliance with Federal laws and regulations;

(c) Consider whether sub-recipient audits necessitate adjustment of the recipient's own records; and

(d) Require each sub-recipient to permit independent auditors to have access to the records and financial statements as necessary for the recipient to comply with this part.

§ 29b.9 Relation to other audit requirements.

(a) An audit made in accordance with this part shall be in lieu of any financial audit required under individual Federal awards to the extent that it provides the Department with the information and assurances it needs to carry out its overall responsibilities, it shall rely upon and use such information. However, the Department shall make any additional audits or reviews necessary to carry out responsibilities under Federal law and regulations. Any additional Federal audits or reviews shall be planned and carried out in such a way as to build upon work performed by the independent auditor.

(b) Audit planning within the Department shall consider the extent to which reliance can be placed upon work performed by other auditors. Such auditors include Federal, State, local, and other independent auditors, and a recipient's internal auditors. Reliance placed upon the work of other auditors should be documented and in accordance with "Government Auditing Standards."

(c) The provisions of this part do not limit the authority of the Department to make or contract for audits and evaluations of Federal awards, nor do

they limit the authority of the Inspector General or other Federal official.

(d) The provisions of this part do not authorize any institution or sub-recipient thereof to constrain the Department, in any manner, from carrying out additional audits, evaluations or reviews.

(e) The Department, when making or contracting for audits in addition to the audits made by recipients pursuant to this part, shall, consistent with other applicable laws and regulations, arrange for funding the cost of such additional audits. Such additional audits or reviews include financial audits, performance audits, and program evaluations.

§ 29b.10 Frequency of audit.

Audits shall usually be performed annually but not less frequently than every two years.

§ 29b.11 Sanctions.

No audit costs may be charged to Federal awards when audits required by this part have not been made or have been made but not in accordance with the provisions of this part. In cases of continued inability or unwillingness to have a proper audit made in accordance with this part, the Department shall consider appropriate sanctions including:

(a) Withholding a precentage of awards until the audit is completed satisfactorily;

(b) Withholding or disallowing overhead costs, or

(c) Suspending Federal awards until the audit is made.

§ 29b.12 Audit costs.

The cost of audits made in accordance with the provisions of this part are allowable charges to Federal awards. The charges may be considered a direct cost or an allocated indirect cost, determined in accordance with the provisions of OMB Circulars A–21, "Cost Principles for Educational Institutions," or A–122, "Cost Principles for Nonprofit Organizations," 48 CFR part 31 of the Federal Acquisition Regulations (FAR) or other applicable cost principles or regulations.

§ 29b.13 Auditor selection.

In arranging for audit services, institutions shall follow the procurement standards prescribed by OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations."

§ 29b.14 Small and minority audit firms.

(a) Small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals shall have the maximum practicable opportunity to participate in contracts awarded to fulfill the requirements of this part.

(b) Recipients of Federal awards shall take the following steps to further this goal:

(1) Ensure that small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals are used to the fullest extent practicable;

(2) Make information on forthcoming opportunities available and arrange timeframes for the audit to encourage and facilitate participation by small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals;

(3) Consider in the contract process whether firms competing for larger audits intend to subcontract with small audit firms and audit firms owned and controlled by socially and economically disadvantaged individuals;

(4) Encourage contracting with small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals which have traditionally audited government programs, and in cases where this is not possible, assure that these firms are given consideration for audit subcontracting opportunities;

(5) Encourage contracting with consortiums of small audit firms as described in paragraph (b)(1) of this section when a contract is too large for an individual small audit firm or audit firm owned and controlled by socially and economically disadvantaged individuals; and

(6) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration in the solicitation and utilization of small audit firms or audit firms owned and controlled by socially and economically disadvantaged individuals.

§ 29b.15 Scope of adult and audit objectives.

(a) The audit shall be made by an independent auditor in accordance with "Government Auditing Standards" developed by the Comptroller General of the United States covering financial audits. An audit under this part should be an organization-wide audit of the institution. However, there may be instances where Federal auditors are performing audits or are planning to perform audits at nonprofit institutions. In these cases, to minimize duplication of audit work, a coordinated audit approach may be agreed upon between the independent auditor, the recipient, and the cognizant agency or the oversight agency. Those auditors who assume responsibility for any or all of the reports called for by § 29b.18 should follow guidance set forth in "Government Auditing Standards" in using work performed by others.

(b) The auditor shall determine whether:

(1) The financial statements of the institution present fairly its financial position and the results of its operations in accordance with generally accepted accounting principles;

(2) The institution has an internal control structure to provide reasonable assurance that the institution is managing Federal awards in compliance with applicable laws and regulations, and controls that ensure compliance with the laws and regulations that could have a material impact on the financial statements; and

(3) The institution has complied with laws and regulations that may have a direct and material effect on its financial statement amounts and on each major Federal program.

§ 29b.16 Internal controls over Federal awards: compliance reviews.

(a) *General.* The independent auditor shall determine and report on whether the recipient has an internal control structure to provide reasonable assurance that it is managing Federal awards in compliance with applicable laws, regulations, and contract terms, and that it safeguards Federal funds. In performing these reviews, independent auditors should rely upon work performed by a recipient's internal auditors to the maximum extent possible. The extent of such reliance should be based upon the "Government Auditing Standards."

(b) *Internal control review.* (1) In order to provide this assurance on internal controls, the auditor must obtain an understanding of the internal control structure and assess levels of internal control risk. After obtaining an understanding of the controls, the assessment must be made whether or not the auditor intends to place reliance on the internal control structure.

(2) As part of this review, the auditor shall:

(i) Perform tests of controls to evaluate the effectiveness of the design and operation of the policies and procedures in preventing or detecting material noncompliance. Tests of controls will not be required for those areas where the internal control structure policies and procedures are

likely to be ineffective in preventing or detecting noncompliance, in which case a reportable condition or material weakness should be reported in accordance with § 29b.18(c)(2); and

(ii) Review the recipient's system for monitoring sub-recipients and obtaining and acting on sub-recipient audit reports.

(c) *Compliance review.* (1) The auditor shall determine whether the recipient has complied with laws and regulations that may have a direct and material effect on any of its major Federal programs. In addition, transactions selected for non-major programs shall be tested for compliance with Federal laws and regulations that apply to such transactions.

(2) In order to determine which major programs are to be tested for compliance, recipients shall identify, in their accounts, all Federal funds received and expended and the programs under which they were received. This shall include funds received directly from Federal agencies, through other State and local governments or other recipients. To assist recipients in identifying Federal awards, Federal agencies and primary recipients shall provide the "Catalog of Federal Domestic Assistance" (CFDA) numbers to the recipients when making the awards.

(3) The review must include the selection of an adequate number of transactions from each major Federal financial assistance program so that the auditor obtains sufficient evidence to support the opinion on compliance required by § 29b.18(c)(3). The selection and testing of transactions shall be based on the auditor's professional judgment considering such factors as the amount of expenditures for the program; the newness of the program or changes in its conditions; prior experience with the program particularly as revealed in audits and other evaluations (e.g., inspections, program reviews, or system reviews required by the FAR); the extent to which the program is carried out through sub-recipients; the extent to which the program contracts for goods or services; the level to which the program is already subject to program reviews or other forms of independent oversight; the adequacy of the controls for ensuring compliance; the expectation of adherence or lack of adherence to the applicable laws and regulations; and the potential impact of adverse findings.

(4) In making the test of transactions, the auditor shall determine whether:

(i) The amounts reported as expenditures were for allowable services, and

(ii) The records show that those who received services or benefits were eligible to receive them.

(5) In addition to transaction testing, the auditor shall determine whether:

(i) Matching requirements, levels of effort and earmarking limitations were met,

(ii) Federal financial reports and claims for advances and reimbursrement contain information that is supported by books and records from which the basic financial statements have been prepared, and

(iii) Amounts claimed or used for matching were determined in accordance with

(A) OMB Circular A–21, "Cost Principles for Educational Institutions;"

(B) Matching or cost sharing requirements in OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Nonprofit Organizations;"

(C) OMB Circular A–122, "Cost Principles for Nonprofit Organizations;"

(D) FAR (48 CFR part 31) cost principles; and

(E) Other applicable cost principles or regulations.

(6) Transactions related to other awards that are selected in connection with examinations of financial statements and evaluations of internal controls shall be tested for compliance with Federal laws and regulations that apply to such transactions.

§ 29b.17 Illegal acts.

If, during or in connection with the audit of a nonprofit institution, the auditor becomes aware of illegal acts, such acts shall be reported in accordance with the provisions of the "Government Auditing Standards."

§ 29b.18 Audit reports.

(a) Audit reports must be prepared at the completion of the audit.

(b) The audit report shall state that the audit was made in accordance with the provisions of this part and OMB Circular A–133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations."

(c) The report shall be made up of at least the following three parts:

(1) The financial statements and a schedule of Federal awards and the auditor's report on the statements and the schedule. The schedule should identify the major programs and show the total expenditures for each program. Individual major programs other than Research and Development and Student Aid should be listed by catalog number as identified in the CFDA. Expenditures for Federal programs other than major programs shall be shown under the caption "other Federal assistance." Also, the value of non-cash assistance such as loan guarantees, food commodities or donated surplus properties or the outstanding balance of loans should be disclosed in the schedule.

(2) A written report of the independent auditor's understanding of the internal control structure and the assessment of control risk. The auditor's report should include at a minimum:

(i) The scope of the work in obtaining understanding of the internal control structure and in assessing the control risk;

(ii) The nonprofit institution's significant internal controls or control structure. The auditor should identify the controls established to ensure compliance with laws and regulations that have a material impact on the financial statements and those that provide reasonable assurance that Federal awards are being managed in compliance with applicable laws and regulations; and

(iii) The reportable conditions, including the identification of material weaknesses, identified as a result of the auditor's work in understanding and assessing the control risk. If the auditor limits consideration of the internal control structure for any reason, the circumstances should be disclosed in the report.

(3) The auditor's report on compliance containing:

(i) An opinion as to whether each major Federal program was being administered in compliance with laws and regulations applicable to the matters described in § 29b.16(c)(3) of this part, including compliance with laws and regulations pertaining to financial reports and claims for advances and reimbursements;

(ii) A statement of positive assurance of those items that were tested for compliance and negative assurance on those items not tested;

(iii) Material findings of noncompliance presented in their proper perspective:

(A) The size of the universe in number of items and dollars,

(B) The number and dollar amount of

transactions tested by the auditors, and

(C) The number and corresponding dollar amount of instances of noncompliance.

(iv) Where findings are specific to a particular Federal award, an identification of total amounts questioned, if any, for each Federal award, as a result of noncompliance and the auditor's recommendations for necessary corrective action.

(d) The three parts of the audit report may be bound into a single document, or presented at the same time as separate documents.

(e) Nonmaterial findings need not be disclosed with the compliance report but should be reported in writing to the recipient in a separate communication. The recipient, in turn, should forward the findings to the Federal grantor agencies or subgrantor sources.

(f) All fraud or illegal acts or indications of such acts, including all questioned costs found as the result of these acts that auditors become aware of, may be covered in a separate written report submitted in accordance with the "Government Auditing Standards."

(g) The auditor's report should disclose the status of known but uncorrected significant material findings and recommendations from prior audits that affect the current audit objective as specified in the "Government Auditing Standards."

(h) In addition to the audit report, the recipient shall provide a report of its comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, a statement describing the reason it is not should accompany the audit report.

(i) Copies of the audit report shall be submitted in accordance with the reporting standards for financial audits contained in the "Government Auditing Standards." Sub-recipient auditors shall submit copies to recipients that provided Federal awards. The report shall be due within 30 days after the completion of the audit, but the audit should be completed and the report submitted not later than 13 months after the end of the recipient's fiscal year unless a longer period is agreed to with the cognizant or oversight agency.

(j) Recipients of more than $100,000 in Federal awards shall submit one copy of the audit report within 30 days after issuance to a central clearinghouse to be designated by OMB. The clearinghouse will keep completed audit reports on file.

(k) Recipients shall keep audit reports, including sub-recipient reports, on file for free three years from their issuance. (OMB control number: 0991–0003)

§ 29b.19 Audit resolution.

(a) As provided in § 29b.6, the cognizant agency shall be responsible for ensuring the resolution of audit findings that affect the programs of more than one Federal agency. Resolution of findings that relate to the programs of a single Federal agency will be the responsibility of the recipient and that agency. Alternate arrangements may be made on a case-by-case basis by agreement among the agencies concerned.

(b) A management decision shall be made within six months after receipt of the reports by the Federal agencies responsible for audit resolution. Corrective action should proceed as rapidly as possible.

§ 29b.20 Audit workpapers and reports.

Workpapers and reports shall be retained for a minimum of three years from the date of the audit report, unless the auditor is notified in writing by the cognizant agency to extend the retention period. Audit workpapers shall be made available upon request to the cognizant agency or its designee or the General Accounting Office, at the completion of the audit.

§ 29b.21 Availability of publications.

(a) The following publications are available from the Government Printing Office, Superintendent of Documents, Washington, DC 20402:

(1) "Catalog of Federal Domestic Assistance" and

(2) "Government Auditing Standards."

(b) The following publications may be obtained from the Grants Officer as identified in the award:

(1) OMB Circular A–21, "Cost Principles for Educational Institutions;"

(2) OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations;"

(3) OMB Circular A–122, "Cost Principles for Nonprofit Organizations;" and

(4) OMB Circular A–133, "Audits of Institutions of Higher Education and Other Nonprofit Organizations."

Sonya G. Stewart,

Director for Federal Assistance and Management Support.

[FR Doc. 91–9202 Filed 4–18–91; 8:45 am]

BILLING CODE 3510-FA-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM90–12–000]

Generic Determination of Rate of Return on Common Equity for Public Utilities

April 15, 1991.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of benchmark rate of return on common equity for public utilities.

SUMMARY: In accordance with § 37.5 of its regulations, the Federal Energy Regulatory Commission, by its designee, the Director of the Office of Economic Policy, issues the update to the benchmark rate of return on common equity applicable to rate filings made during the period May 1, 1991 through July 31, 1991. This benchmark rate is set at 12.02 percent.

EFFECTIVE DATE: May 1, 1991.

FOR FURTHER INFORMATION CONTACT: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–1283.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3308 at the Commission's Headquarters, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Benchmark Rate of Return on Common Equity For Public Utilities

Issued April 15, 1991.

On December 26, 1990, the Federal Energy Regulatory Commission (Commission) issued a final rule (Order No. 532) concerning the generic determination of the rate of return on common equity for public utilities.[1] In several earlier rulemaking proceedings, the Commission established a discounted cash flow (DCF) formula to determine the average cost of common equity and a quarterly indexing procedure to calculate benchmark rates of return on common equity for public utilities and codified the formula and procedure at § 37.9 of its regulations.[2] In Order No. 532, the Commission determined that 4.3 percent is an appropriate expected annual dividend growth rate for use in the quarterly indexing procedure during the 12 months beginning February 1, 1991 and that 0.02 percent is an appropriate flotation cost adjustment factor for that period.

The Commission, by its designee, the Director of the Office of Economic Policy, uses the quarterly indexing procedure to determine that the benchmark rate of return on common equity applicable to rate filings made during the period May 1, 1991 through July 31, 1991 is 12.02 percent.

Section 37.9 of the Commission's regulations requires that the quarterly benchmark rate of return be set equal to the average cost of common equity for the jurisdictional operations of public utilities. This average cost is based on the average of the median dividend yields for the two most recent calendar quarters for a sample of 97 utilities. The average yield is used in the following formula with fixed adjustment factors (determined in the most recent annual proceeding) to determine the cost rate:

$$k_t = 1.02\ Y_t + 4.32$$

where k_t is the average cost of common equity and Y_t is the average dividend yield.

The attached appendix provides the supporting data for this update. The median dividend yields for the sample of utilities for the fourth quarter of 1990 and the first quarter of 1991 are 7.66 percent and 7.43, respectively. The average yield for those two quarters is 7.55 percent. Use of the average dividend yield in the above formula produces an average cost of common equity of 12.02 percent.

This notice supplements the generic rate of return rule announced in Order No. 532, issued December 26, 1990 and effective on February 1, 1991.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends part 37, chapter I, title 18 of the Code of Federal Regulations, as set forth below, effective May 1, 1991.

Richard P. O'Neill,
Director, Office of Economic Policy.

PART 37—GENERIC DETERMINATION OF RATE OF RETURN ON COMMON EQUITY FOR PUBLIC UTILITIES

1. The authority citation for part 37 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982).

2. In § 37.9, paragraph (d) is revised to read as follows:

§ 37.9 Quarterly indexing procedure.

* * * * *

(d) *Table of Quarterly Benchmark Rates of Return.* The following table presents the quarterly benchmark rates of return on common equity:

Benchmark applicability period	Dividend increase adjustment factor	Expected growth adjustment factor	Current dividend yield	Cost of common equity	Benchmark rate of return
(t)	(a)	(b)	(Y_t)	(k_t)	
2/1/86–4/30/86	1.02	4.54	9.03	13.75	13.75
5/1/86–7/31/86	1.02	4.54	8.37	13.08	13.25
8/1/86–10/31/86	1.02	4.54	7.49	12.18	12.75
11/1/86–1/31/87	1.02	4.54	6.75	11.43	12.25
2/1/87–4/30/87	1.02	4.63	6.44	11.20	11.20
5/1/87–7/31/87	1.02	4.63	6.54	11.30	11.30
8/1/87–10/31/87	1.02	4.63	6.97	11.74	11.74
11/1/87–1/31/88	1.02	4.63	7.49	12.27	12.27
2/1/88–4/30/88	1.02	4.36	7.90	12.42	12.42
5/1/88–7/31/88	1.02	4.36	7.99	12.51	12.51
8/1/88–10/31/88	1.02	4.36	7.84	12.36	12.36
11/1/88–1/31/89	1.02	4.36	7.92	12.44	12.44
2/1/89–4/30/89	1.02	4.33	7.89	12.38	12.38
5/1/89–7/31/89	1.02	4.33	7.95	12.44	12.44
8/1/89–10/31/89	1.02	4.33	7.94	12.43	12.43
11/1/89–1/31/90	1.02	4.33	7.56	12.04	12.04
2/1/90–4/30/90	1.02	4.32	7.28	11.75	11.75
5/1/90–7/31/90	1.02	4.32	7.38	11.85	11.85
8/1/90–10/31/90	1.02	4.32	7.59	12.06	12.06
11/1/90–1/31/91	1.02	4.32	7.81	12.29	12.29
2/1/91–4/30/91	1.02	4.32	7.80	12.28	12.28
5/1/91–7/31/91	1.02	4.32	7.55	12.02	12.02

[1] Generic Determination of Rate of Return on Common Equity for Public Utilities, Order No. 532, 56 FR 10, (1991), Order No. 532, III FERC Statutes and Regulations ¶ 30,909 (1991).

[2] 18 CFR 37.9 (1989). The most recent adoption of the DCF formula and quarterly indexing procedure came in Order No. 489, 53 FR 3342 (Feb. 5, 1988).

Note: The appendix will not be published in Code of Federal Regulations.

Appendix

Exhibit No.	Title
1	Initial sample of utilities
2	Utilities excluded from the sample for the indicated quarter due to either zero dividends or a reduction in dividends for this quarter or the prior three quarters.
3	Annualized dividend yields for the indicated quarter for utilities retained in the sample

Source of Data: Standard and Poor's Compustat Services, Inc., Utility COMPUSTAT II Quarterly Data Base.

EXHIBIT 1.—SAMPLE OF UTILITIES

Utility	Ticker Symbol	Industry Code
Allegheny Power System	AYP	4911
American Electric Power	AEP	4911
Atlantic Energy Inc	ATE	4911
Baltimore Gas & Electric	BGE	4931
Black Hills Corp	BKH	4911
Boston Edison Co	BSE	4911
Carolina Power & Light	CPL	4911
Centerior Energy Corp	CX	4911
Central & South West Corp.	CSR	4911
Central Hudson Gas & Elec.	CNH	4931
Central Louisiana Electri	CNL	4911
Central Maine Power Co	CTP	4911
Central Vermont Pub Serv.	CV	4911
Cilcorp Inc	CER	4931
Cincinnati Gas & Electric	CIN	4931
Cipsco Inc	CIP	4931
CMS Energy Corp	CMS	4931
Commonwealth Edison	CWE	4911
Commonwealth Energy Syste.	CES	4931
Consolidated Edison of NY.	ED	4931
Delmarva Power & Light	DEW	4931
Detroit Edison Co	DTE	4911
Dominion Resources Inc	D	4931
DPL Inc	DPL	4931
DQE Inc	DQE	4911
Duke Power Co	DUK	4911
Eastern Utilities Assoc	EUA	4911
Empire District Electric	EDE	4911
Entergy Corp	ETR	4911
Fitchburg Gas & Elec Ligh.	FGE	4931
Florida Progress Corp	FPC	4911
FPL Group Inc	FPL	4911
General Public Utilities	GPU	4911
Green Mountain Power Corp.	GMP	4911
Gulf States Utilities Co	GSU	4911
Hawaiian Electric Inds	HE	4911
Houston Industries Inc	HOU	4911
I E Industries Inc	IEL	4931
Idaho Power Co	IDA	4911
Illinois Power Co	IPC	4931
Interstate Power Co	IPW	4931
Iowa-Illinois Gas & Elec	IWG	4931
Ipalco Enterprises Inc	IPL	4911
Kansas City Power & Light.	KLT	4911
Kansas Gas & Electric	KGE	4911
Kansas Power & Light	KAN	4931
Kentucky Utilities Co	KU	4911
LG&E Energy Corp	LGE	4931
Long Island Lighting	LIL	4931
Main Public Service	MAP	4911
Midwest Resources	MWR	4931
Minnesota Power & Light	MPL	4911
Montana Power Co	MTP	4931
Nevada Power Co	NVP	4911
New England Electric Syst.	NES	4911
New York State Elec & Gas.	NGE	4931
Niagara Mohawk Power	NMK	4931
Nipsco Industries Inc	NI	4931
Northeast Utilities	NU	4911
Northern States Power-MN	NSP	4931
Northwestern Public Serv	NPS	4931
Ohio Edison Co	OEC	4911
Oklahoma Gas & Electric	OGE	4911
Orange & Rockland Utiliti	ORU	4931
Pacific Gas & Electric	PCG	4931
Pacificorp	PPW	4931
Pennsylvania Power & Light.	PPL	4911
Philadelphia Electric Co	PE	4931
Pinnacle West Capital	PNW	4911
Portland General Corp	PGN	4911
Potomac Electric Power	POM	4911
PSI Resources Inc	PIN	4911
Public Service Co of Colo.	PSR	4931
Public Service Co of NH	PNH	4911
Public Service Co of N ME.	PNM	4931
Public Service Entrp	PEG	4931
Puget Sound Power & Light.	PSD	4911
Rochester Gas & Electric	RGS	4931
San Diego Gas & Electric	SDO	4931
Scana Corp	SCG	4931
SCECORP	SCE	4911
Sierra Pacific Res	SRP	4931
Southern Co	SO	4911
Southern Indiana Gas & EL.	SIG	4931
St Joseph Light & Power	SAJ	4931
Teco Energy Inc	TE	4911
Texas Utilities Co	TXU	4911
TNP Enterprises Inc	TNP	4911
Tucson Electric Power Co.	TEP	4911
Union Electric	UEP	4911
United Illuminating Co	UIL	4911
UNITIL Corp	UTL	4911
UTILICORP United Inc	UCU	4931
Washington Water Power	WWP	4931
Wisconsin Energy Corp	WEC	4931
Wisconsin Public Service	WPS	4931
WPL Holdings Inc	WPH	4931

N=97

EXHIBIT 2.—UTILITIES EXCLUDED FROM THE SAMPLE FOR THE INDICATED QUARTER DUE TO EITHER ZERO DIVIDENDS OR A CUT IN THE DIVIDENDS FOR THIS QUARTER OR THE PRIOR THREE QUARTERS

[Year=91—Quarter=1]

Ticker Symbol	Utility	Reason for Exclusion
GSU	Gulf States Utilities Co	Dividend rate was zero for quarter 91Q1.
IPC	Illinois Power Co	Dividend rate was zero for quarter 91Q1.
MWR	Midwest Resources	Insufficient History of Dividends.
NMK	Niagara Mohawk Power	Dividend rate was zero for quarter 91Q1.
OEC	Ohio Edison Co	Dividend rate was reduced for the quarter 90Q3.
PE	Philadelphia Electric Co	Dividend rate was reduced for the quarter 90Q2.
PNW	Pinnacle West Capital	Dividend rate was zero for quarter 91Q1.
PNH	Public Service Co of N H	Dividend rate was zero for quarter 91Q1.
PNM	Public Service Co of N ME	Dividend rate was zero for quarter 91Q1.
TEP	Tucson Electric Power Co	Dividend rate was zero for quarter 91Q1.

N=10

EXHIBIT 3.—ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE

[Year = 91 Quarter = 1]

Ticker symbol	Price, 1st month of qtr—high	Price, 1st month of qtr—low	Price, 2nd month of qtr—high	Price, 2nd month of qtr—low	Price, 3rd month of qtr—high	Price, 3rd month of qtr—low	Average price	Dividends annual rate	Annualized dividend yield
AEP	28.250	27.125	29.500	26.625	29.250	27.250	28.000	2.400	8.571
ATE	34.250	32.000	36.125	33.000	36.375	34.125	34.313	2.960	8.627
AYP	37.375	34.875	39.875	37.000	39.500	36.875	37.583	3.160	8.408
BGE	28.250	25.750	28.875	26.000	29.500	27.500	27.646	2.100	7.596
BKH	31.000	29.125	33.625	30.625	35.125	32.500	32.000	1.760	5.500
BSE	20.250	18.250	20.500	19.250	20.500	19.500	19.708	1.580	8.017
CER	35.000	31.000	34.250	31.500	33.500	32.000	32.875	2.460	7.483
CES	33.000	30.000	33.125	30.625	32.250	31.125	31.688	2.920	9.215
CIN	29.875	27.875	31.125	29.000	33.250	30.625	30.292	2.480	8.187
CIP	22.500	21.375	23.250	21.875	23.375	21.500	22.313	1.840	8.246
CMS	29.875	26.500	33.000	28.500	33.000	29.625	30.083	0.480	1.596
CNH	24.875	22.625	24.500	23.625	24.875	23.625	24.021	1.840	7.660
CNL	36.250	34.500	38.875	36.125	38.625	37.500	36.979	2.560	6.923
CPL	46.750	43.250	49.000	44.250	48.000	46.250	46.250	3.040	6.573
CSR	45.000	42.750	45.875	43.500	45.875	41.500	44.083	2.920	6.624
CTP	18.500	16.875	18.500	17.375	18.875	17.625	17.958	1.560	8.687
CV	27.250	25.625	26.750	25.875	26.500	25.500	26.250	2.080	7.924
CWE	35.750	33.625	39.375	34.875	40.000	38.000	36.938	3.000	8.122
CX	18.375	16.875	19.375	17.625	19.875	18.250	18.396	1.600	8.698
D	47.375	45.000	48.375	45.125	48.250	44.750	46.479	3.440	7.401
DEW	18.125	16.625	18.500	17.000	19.250	17.875	17.896	1.540	8.605
DPL	19.750	18.625	20.250	19.000	21.000	19.625	19.708	1.620	8.220
DQE	25.000	23.625	25.875	24.250	25.250	24.125	24.688	1.440	5.833
DTE	29.000	27.750	30.500	28.000	29.500	27.750	28.750	1.880	6.539
DUK	30.750	27.500	29.375	27.125	29.250	26.750	28.458	1.640	5.763
ED	24.000	22.500	24.875	23.125	25.875	23.375	23.958	1.860	7.763
EDE	31.875	29.500	33.125	31.250	33.500	31.000	31.708	2.420	7.632
ETR	23.500	21.875	24.375	22.375	24.625	23.125	23.313	1.200	5.147
EUA	25.000	23.125	24.750	20.875	23.000	18.750	22.583	2.600	11.513
FGE	30.500	29.750	32.125	29.875	30.750	29.750	30.458	2.120	6.960
FPC	38.875	36.625	40.750	38.375	40.250	38.625	38.917	2.740	7.041
FPL	29.375	28.125	31.500	28.625	30.375	28.875	29.479	2.360	8.006
GMP	23.375	22.000	26.125	23.125	26.000	24.375	24.167	2.020	8.359
GPU	45.500	43.500	47.250	43.750	48.625	45.125	45.625	2.600	5.699
HE	32.375	29.375	33.500	31.500	33.875	32.250	32.146	2.200	6.844
HOU	36.750	34.625	37.875	36.250	36.625	35.000	36.188	2.960	8.180
IDA	26.125	24.750	26.875	24.500	28.000	26.375	26.104	1.860	7.125
IEL	28.000	26.250	28.750	27.375	28.375	26.750	27.583	2.100	7.613
IPL	27.000	25.500	27.625	26.250	28.000	26.375	26.792	1.880	7.017
IPW	26.625	24.875	27.250	25.750	28.750	26.750	26.667	2.040	7.650
IWG	21.500	20.750	21.875	20.750	21.375	20.000	21.042	1.710	8.127
KAN	22.000	20.750	23.750	21.500	24.000	22.500	22.417	1.860	8.297
KGE	27.500	26.375	27.375	25.500	27.625	25.375	26.625	1.720	6.460
KLT	36.125	34.250	36.375	35.125	36.375	35.375	35.604	2.680	7.527
KU	21.125	19.500	21.625	20.125	21.375	20.250	20.667	1.500	7.258
LGE	40.250	38.000	40.875	38.500	40.750	39.000	39.563	2.840	7.179
LIL	21.375	19.000	23.125	20.375	23.250	21.875	21.500	1.500	6.977
MAP	22.250	20.750	22.250	20.875	22.375	20.750	21.542	1.680	7.799
MPL	27.125	26.000	28.000	26.000	28.750	26.750	27.104	1.900	7.010
MTP	20.250	18.875	21.625	19.750	22.250	20.750	20.583	1.480	7.190
NES	25.250	24.000	27.125	25.125	27.500	25.625	25.771	2.040	7.916
NGE	26.250	24.375	26.750	24.375	26.375	24.750	25.479	2.080	8.164
NI	19.500	18.500	20.375	18.750	20.125	18.625	19.313	1.160	6.006
NPS	21.750	20.250	22.875	21.625	25.000	22.875	22.396	1.520	6.787
NSP	34.000	31.750	34.875	32.750	36.000	33.125	33.750	2.320	6.874
NU	20.250	19.000	21.500	20.000	20.750	19.750	20.208	1.760	8.709
NVP	22.125	20.500	22.500	20.375	21.875	20.625	21.333	1.600	7.500
OGE	38.875	36.750	40.375	37.250	40.125	38.375	38.625	2.580	6.680
ORU	31.625	30.875	32.625	31.000	33.250	31.000	31.729	2.340	7.375
PCG	25.750	24.250	26.000	24.625	26.250	24.000	25.146	1.640	6.522
PEG	26.750	25.500	28.125	26.000	27.375	25.875	26.604	2.120	7.969
PGN	18.250	16.500	18.250	17.375	18.375	17.375	17.688	1.200	6.784
PIN	16.750	15.625	17.875	15.875	18.250	17.000	16.896	0.880	5.208
POM	20.875	19.625	22.000	19.875	21.500	20.625	20.750	1.560	7.518
PPL	44.000	41.750	45.000	42.125	45.000	42.500	43.396	3.100	7.144
PPW	22.250	20.375	23.000	20.625	22.750	21.000	21.667	1.440	6.646
PSD	20.875	19.750	21.875	19.125	22.000	21.125	20.792	1.760	8.465
PSR	23.375	21.250	23.250	21.500	23.500	22.125	22.500	2.000	8.889
RGS	20.000	17.750	20.750	19.375	20.750	18.750	19.563	1.620	8.281
SAJ	28.375	26.625	28.500	26.625	29.625	28.000	27.958	1.660	5.937
SCE	38.625	36.000	39.375	37.125	40.000	37.250	38.063	2.640	6.936
SCG	35.125	33.500	36.875	34.250	37.000	34.875	35.271	2.620	7.428
SDO	45.750	43.375	44.750	42.000	45.000	42.125	43.833	2.700	6.160
SIG	33.500	31.250	33.500	31.500	33.875	31.750	32.563	2.000	6.142
SO	28.000	25.750	28.750	25.875	28.750	26.750	27.313	2.140	7.835
SRP	22.375	20.125	22.750	21.125	22.750	21.875	21.833	1.840	8.427

EXHIBIT 3.—ANNUALIZED DIVIDEND YIELDS FOR THE INDICATED QUARTER FOR UTILITIES RETAINED IN THE SAMPLE—Continued

[Year = 91 Quarter = 1]

Ticker symbol	Price, 1st month of qtr—high	Price, 1st month of qtr—low	Price, 2nd month of qtr—high	Price, 2nd month of qtr—low	Price, 3rd month of qtr—high	Price, 3rd month of qtr—low	Average price	Dividends annual rate	Annualized dividend yield
TE	33.875	31.500	33.750	31.500	33.625	31.625	32.646	1.620	4.962
TNP	21.000	19.375	20.500	18.500	20.500	19.500	19.896	1.630	8.193
TXU	37.000	35.500	38.625	36.125	37.125	35.625	36.667	3.000	8.182
UCU	21.375	20.125	22.625	21.250	23.000	21.625	21.667	1.520	7.015
UEP	29.875	28.500	31.375	28.625	30.625	28.750	29.625	2.160	7.291
UIL	33.125	30.000	34.250	32.500	34.500	32.500	32.813	2.440	7.436
UTL	33.000	32.000	33.000	31.750	34.000	32.000	32.625	2.240	6.866
WEC	31.750	30.000	33.625	30.875	34.500	31.500	32.042	1.760	5.493
WPH	25.125	22.625	26.000	23.250	26.500	24.875	24.729	1.800	7.279
WPS	24.000	22.250	24.875	22.500	25.125	24.375	23.854	1.660	6.959
WWP	30.125	28.375	30.750	29.000	30.000	29.500	29.625	2.480	8.371

N = 87

[FR Doc. 91-9181 Filed 4-18-91; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject to Certification; Oxytocin Injection and Phenylbutazone Injection; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor for two new animal drug applications (NADA's) from Lemmon Co. to Steris Laboratories, Inc.

EFFECTIVE DATE: April 19, 1991.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-1414.

SUPPLEMENTARY INFORMATION: Lemmon Co., Sellersville, PA 18960, has informed FDA that it has transferred ownership of, and all rights and interests of approved NADA's 048-391 (phenylbutazone injection 200 milligrams per milliliter) and 049-183 (oxytocin injection 20 units per milliliter) to Steris Laboratories, Inc., 620 North 51st Ave., Phoenix, AZ 85043-4705.

Steris Laboratories has confirmed this change. Because Steris Laboratories, Inc., currently holds NADA's for these type products that are listed under 21 CFR part 500, their sponsor number is already codified in the appropriate sections. Appropriate changes are made in 21 CFR 522.1680(b) and 522.1720(b)(2) to remove Lemmons' sponsor number.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Durgs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 522.1680 [Amended]

2. Section 522.1680 *Oxytocin injection* is amended in paragraph (b) by removing "000693,".

§ 522.1720 [Amended]

3. Section 522.1720 *Phenylbutazone injection* is amended in paragraph (b)(2) by removing "000693,".

Dated: April 15, 1991.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 91-9210 Filed 4-18-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 206

[Docket No. R-91-1508; FR-2933-F-01]

Elimination of Reservations of Insurance Authority Home Equity Conversion Mortgage Insurance Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to eliminate reservations of insurance authority required by 24 CFR part 206. Insurance under the Home Equity Conversion Mortgage Insurance program will not be available to any HUD-approved mortgagee which closes a loan in accordance with the program requirements.

EFFECTIVE DATE: May 20, 1991.

FOR FURTHER INFORMATION CONTACT: Morris E. Carter, Director, Single Family Development Division, (202) 708-2700, room 9272, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

Paperwork Burden

This final rule reduces the paperwork burden imposed upon private lenders under the Home Equity Conversion Mortgage (HECM) program. Since the OMB control number (2528-0133) for the overall HECM program expires in September, 1991, HUD will submit to OMB prior to that date a paperwork package for the HECM program, which

will also reflect the reduction in paperwork burden resulting from this final rule. The Department will also publish at that time a notice in the Federal Register setting forth the paperwork burden for each individual information collection requirement contained in the HECM program. The public will have an opportunity at that time to comment on the information collection requirements for the program.

Section 417 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, approved February 15, 1988), added a new section 255 to the National Housing Act (Act) which authorized the Secretary to carry out the Home Equity Conversion Mortgage Insurance (reverse mortgage) demonstration program for insuring mortgages on the homes of elderly homeowners, thereby enabling the homeowners to convert the equity in their homes to cash. The insurance authority granted to the Secretary under section 255 of the Act was limited to 2,500 reverse mortgages.

On June 9, 1989 (54 FR 24822), the Department implemented the program by publishing a final rule that added a new part 206 to Title 24, chapter II of the Code of Federal Regulations. Due to the limited insurance authority for reverse mortgages, the regulations at § 206.11 establish a reservation system to distribute the insurance authority to mortgagees. Under § 206.11, a mortgagee is required to apply for a reservation of insurance authority before taking an application from a mortgagor in order to be assured that the Secretary will have sufficient authority to insure the reverse mortgage after closing.

Section 2107 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508, approved November 5, 1990) amended section 255(g) of the Act and increased the Secretary's insurance authority for the reverse mortgage program to 25,000 mortgages. The Department believes that this authority is sufficient to accommodate the foreseeable demand for reverse mortgage insurance for several years. Therefore, this final rule removes § 206.11 and amends § 206.15 to eliminate the requirement that mortgagees apply for reservation of insurance authority. Mortgagees currently holding reservations of insurance authority for which no case numbers have been assigned will no longer need to use those reservations. Any eligible mortgagee will be permitted to request case numbers for reverse mortgages about to be executed.

The Department has determined in accordance with the Administrative Procedure Act, 5 U.S.C. 553, that there is good cause to dispense with a proposed rulemaking in this case. Public comment is unnecessary because the rule implements a statutory change that is not discretionary and relieves affected mortgagees of a restriction which no longer has any purpose. Additionally, public comment is contrary to the public interest because it would delay the availability of reverse mortgages to elderly homeowners. Since the rule liberalizes the availability of reverse mortgage insurance, no borrower or mortgagee will be harmed by the regulatory change.

The Department plans to conduct training sessions for lenders after January 1, 1991. These sessions will be announced in a mortgagee letter. However, such training is not a prerequisite for participation in the program. Lenders interested in originating reverse mortgages should secure a copy of 24 CFR part 206, HUD Handbook 4235.1, and Mortgagee Letter 980–17 from their nearest HUD field office.

Other Matters

This rule does not constitute a "major rule" as the term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individuals, industries, Federal, State or local government, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The elimination of reservations of insurance authority increase the ability of all lenders to participate in the reverse mortgage program. Accordingly, the economic impact of this rule is minimal and will affect small and large entities equally.

This rule was not listed in the Department's Semiannual Agenda of Regulations published October 29, 1990 (55 FR 44530) in the Federal Register under Executive Order 12291 and the Regulatory Flexibility Act.

The Department has determined that this rule is categorically excluded from the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4332), in accordance with HUD regulations at 24 CFR 50.20(K).

Executive Order 12612, Federalism

The General Counsel, as the Designated Offical under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule does not have federalism implications and, thus, is not subject to review under the Order. This rule reduces the burden imposed upon private lenders that want to participate in the Home Equity Conversion Mortgage program, and does not have a substantial direct effect on the States, or the relationship between the Federal government and the States, or on the distrbution of power and responsibilities among the various levels of government.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have the potential for significant impact on family formation, maintenance and general well-being, since the rule is aimed at private lenders and relates to the processing of mortgage insurance applications under the reverse mortgage program. As a result, this rule is not subject to review under the Executive Order.

List of Subjects in 24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR part 206 is amended to read as follows:

1. The authority citation for 24 CFR part 206 continues to read as follows:

Authority: Sec. 235 of the National Housing Act (23 U.S.C. 1715b, 1715z–20(g)); sec. 7(b), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 206.11 [Removed]

2. Section 206.11 is removed.

3. Section 206.15 (a) and (b) are revised to read as follows:

§ 206.15 Application for insurance.

(1) *Application.* Mortgages may apply for insurance authority in accordance with instructions issued by the Secretary.

(b) *Submission.* A mortgagee which holds a case number may submit an application for insurance of a mortgage which is about to be executed on a form prescribed by the Secretary.

* * * * *

Dated: April 12, 1991.

Arthur J. Hill,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91-9125 Filed 4-18-91; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Regulatory Program; Revision of Administrative Rules and the Ohio Revised Code

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of proposed Revised Program Amendment Number 41 to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment is intended to revise four Ohio administrative rules and one section of the Ohio Revised Code to be consistent with the corresponding Federal regulations regarding ownership and control of mining operations and the identification and rescission of improvidently issued permits. Ohio is also proposing other rule revisions to eliminate inconsistent statutory language concerning enforcement of notices and orders and public inspection of permit applications.

EFFECTIVE DATE: April 19, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Richard J. Seibel, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, 2242 South Hamilton Road, room 202, Columbus, Ohio 43232, (614) 866-0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Submission of Amendment

By letter dated May 11, 1989 (Administrative Record No. OH-1332), the Director of OSM notified Ohio that OSM had recently promulgated three new Federal rules that define ownership and control, that specify the effect of ownership and control information on the issuance of permits and the reporting of violations, and that provide criteria and procedures for the identification and rescission of improvidently issued mining permits. The Director required Ohio to modify its regulatory program to remain consistent with the new Federal requirements.

In response to the Director's notification, the Ohio Department of Natural Resources, Division of Reclamation (Ohio), submitted informal Program Amendment Number 41 by letter dated October 2, 1989 (Administrative Record No. OH-1288). OSM provided comments to Ohio on the informal amendment by letter dated March 1, 1990 (Administrative Record No. OH-1287).

By letter dated June 25, 1990 (Administrative Record No. OH-1333), Ohio submitted responses to OSM's comments on the informal amendment and also submitted formal Program Amendment Number 41. The amendment proposed changes to four Ohio administrative rules and one section of the Ohio Revised Code regarding ownership and control of mining operations and the identification and rescission of improvidently issued mining permits. Ohio also proposed other rule revisions concerning enforcement of notices and orders and public inspection of permit applications.

OSM announced receipt of the proposed amendment in the July 13, 1990, **Federal Register** (55 FR 28779), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments. The comment period closed on August 13, 1990. The public hearing scheduled for August 7, 1990, was not held because no one requested an opportunity to testify. OAC section 1501:13-4-03(F) was listed as an amended section in the proposed rule notice. This was an error because the section was not being changed.

On October 11, 1990, OSM sent its comments to Ohio on the proposed amendment (Ohio Administrative Record No. OH-1382). In response to OSM's letter, on November 15, 1990, Ohio formally submitted Revised Program Amendment Number 41 (Ohio Administrative Record No. OH-1411). This revised amendment proposed further revisions to three rules which are in addition to or which replace the revisions proposed in the previous version of the amendment. The remaining revisions previously proposed by Ohio in Program Amendment Number 41 to one other rule and to one section of the Ohio Revised Code are unchanged. OSM announced receipt of the proposed revisions in the December 20, 1990, **Federal Register** (55 FR 52182) and in the same notice, reopened the public comment period. The comment period closed on January 22, 1991. The public hearing scheduled for January 14, 1991, was not held because no one requested an opportunity to testify.

In the proposed rule notice of July 13, 1990 (55 FR 28779), OSM inadvertently omitted specific discussion of three of the proposed changes to the Ohio program. In order to identify those three proposed changes and to provide an opportunity for public comment on those changes, OSM reopened the public comment period on February 15, 1991 (56 FR 6336). The comment period closed on March 4, 1991. The public hearing scheduled for February 25, 1991, was not held because no one requested an opportunity to testify.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Ohio program. Only those revisions of particular interest are discussed below. Any revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions which are not discussed below correct paragraph letter notations or make minor language changes to improve the clarity of the rules.

A. Revisions to Ohio's Regulations That Are Substantively Identical to the Corresponding Federal Regulations

State regulation	Subject	Federal counterpart
OAC 1501:13-4-03(A)	Ownership and Control	30 CFR 773.5.
OAC 1501:13-4-03(B)(1) through (11) and (C)	Ownership and Control	30 CFR 778.13 (b), (c), (d), (i), 778.14 (c) and (d).
OAC 1501:13-5-01(D)	Ownership and Control	30 CFR 773.15 (b)(1), (b)(2), (b)(3).
OAC 1501:13-5-01(E)(8)	Ownership and Control	30 CFR 773.15 (c)(7).
OAC 1501:13-5-01(F)	Ownership and Control	30 CFR 773.15. (e).
OAC 1501:13-5-01(G)(5)	Ownership and Control	30 CFR 773.17(i).
OAC 1501:13-5-01(H)(5)	Ownership and Control	30 CFR 773.17(g).
OAC 1501:13-5-02	Improvidently Issued Permits	30 CFR 773.20, 773.21.
OAC 1501:13-14-02(A)(8)	Ownership and Control	30 CFR 843.11(g).
OAC 1501:13-14-02(C)(7)	Enforcement Activities	30 CFR 843.13(b).
OAC 1501:13-14-02(I)	Enforcement Activities	Section 521(c), SMCRA.

OAC 1501:13-5-01(D)(3) includes civil penalties which arise from violations of SMCRA and the Ohio Administrative Code. The Federal counterpart at 30 CFR 773.15(b) includes all civil penalties that arise from violations of SMCRA, its implementing regulations, and approved state or federal programs. Ohio provided a letter of interpretation on April 1, 1991 (Administrative Record Number OH-1498). This letter indicates that Ohio interprets this setion to require consideration of civil penalties resulting from violations of SMCRA's implementing regulations and other approved state or federal programs.

Because the above proposed revisions are identical in meaning to the corresponding Federal regulations, the Director finds that Ohio's proposed rules are no less effective than the Federal rules.

B. Revisions to Ohio's Regulations That Are Not Substantively Identical to the Corresponding Federal Regulations

OAC Section 1501:13-4-03(B)(12)

Ohio is proposing that the permit applicant submit the information required by paragraphs (B) and (C) on a form prescribed by the Chief. Under 30 CFR 778.13(j), an applicant shall submit the information required by 30 CFR 778.13 and 778.14 in any prescribed format that is issued by OSM. The prescribed format referred to in 30 CFR 778.13(j) is to be used for standardizing data entry into the Applicant Violator System. To be no less effective than the Federal rule at 30 CFR 778.13(j), Ohio must require permit applicants to submit the information in the format specified by OSM. By letter dated November 15, 1990 (Administrative Record No. OH-1411), Ohio has acknowledged that they will adopt OSM's format for submittal of ownership and control information required in paragraphs (B) and (C) of rule OAC 1501:13-4-03 once that format is specified. Ohio is not proposing any change in the language of OAC 1501:13-4-03(B)(12) since it is their intention that the form prescribed by the Chief will be drafted in the format prescribed by OSM. Because Ohio has committed through its letter of November 15, 1990, to adopt OSM's format for submittal of ownership and control information required in paragraphs (B) and (C) of OAC 1501:13-4-03 once that format is specified, the Director finds that Ohio's proposed rule is no less effective than the Federal rule at 30 CFR 778.13(j).

OAC Section 1501:13-5-01(A)(4)(a)

Ohio is revising this paragraph to provide that, if approved by the Chief, the applicant may provide for public inspection of permit applications, including applications for permit revisions and renewals, by filing a copy of the application at the Division of Reclamation district office responsible for inspection of the proposed operation. The proposed rule would delete language which authorizes the permittee, if approved by the Chief, to file a copy for public inspection at "another equivalent public office." The deleted language would be replaced by the words "the Division of Reclamation office responsible for inspection of the proposed operation." The Director finds that the proposed amendment renders the Ohio rule to be no less effective than the Federal rule at 30 CFR 773.13(a)(2) which requires that the copy for public inspection be filed at the county courthouse where the mining is proposed to occur, or an accessible public office approved by the regulatory authority.

Ohio Revised Code (ORC) 1513.07(E)(6)(a) through (E)(6)(b)(iii)

Ohio is deleting this section to remove language inconsistent with Ohio's proposed rules regarding ownership and control. The Director finds that the proposed deletion of the provisions at ORC 1513.07(E)(6)(a) through (b)(iii) when considered in concert with the proposed amendments to the Ohio rules concerning ownership and control render the Ohio program to be no less stringent than SMCRA and no less effective than the Federal regulations concerning ownership and control.

C. Revisions to Ohio's Regulations with no Corresponding Federal Regulations

OAC 1501:13-14-02(D)(1)(c)

Ohio is adding this paragraph to provide that if Ohio is unsuccessful in delivering a notice or order by hand or by certified mail, service of the notice or order may be made by first class mail to the most current address on file with the Division of Reclamation for the designated recipient. There is no Federal counterpart to the proposed rule. The Federal rules concerning service of notices of violation, cessation orders, and show cause orders are presented at 30 CFR 843.14. These Federal rules specify the steps which must be taken to serve notices and orders. The Ohio program contains approved counterparts to these Federal requirements, and the proposed rule does not change these approved requirements. The proposed rule adds that, in the event attempts to deliver the notice or order by hand or by certified mail are unsuccessful, service of the notice or order may then be made by first class mail to the most current address on file with the Division of Reclamation. The Director finds that the proposed language would provide the regulatory authority with an appropriate mechanism to accomplish service in the event that attempts to serve under OAC 1501:13-14-02(D)(1)(a) and (b) prove unsuccessful. The Ohio rules at OAC 1501:13-4-03(B)(1) require that a permittee provide the regulatory authority with the permittee's addresses and the address of the permittee's agent who will accept service, and OAC 1501:13-4-03(B)(11) requires that the information be updated prior to permit issuance. The Director finds, therefore, that the proposed rule is reasonable, and is not inconsistent with the Federal regulations and can be approved. In approving the rule, the Director assumes that Ohio will make a conscientious effort to serve any notices or orders via

the approved methods at OAC 1501:13-14-02(D)(1)(a) and (b) prior to acting under the provisions of the proposed rule.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing announced in the July 13, 1990, **Federal Register** (55 FR 28779) closed on August 13, 1990. No public comments were received and the scheduled public hearing was not held because no one requested an opportunity to provide testimony.

The public comment period was subsequently reopened and announced in the December 20, 1990, **Federal Register** (55 FR 52182) and again in the February 15, 1991, **Federal Register** (56 FR 6336). The comment periods closed on January 22, 1991, and March 4, 1991, respectively. No public comments were received and the scheduled public hearings were not held because no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio program. The U.S. Environmental Protection Agency supported the amendment.

V. Director's Decision

Based on the above findings, the Director is approving Revised Program Amendment Number 41 as submitted by Ohio on June 25, 1990, and amended on November 15, 1990. The Federal regulations at 30 CFR part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs in conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 11, 1991.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 935—OHIO

1. The authority citation for part 935 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 935.15, a new paragraph (vv) is added to read as follows:

§ 935.15 Approval of regulatory program amendments.

* * * * *

(vv) The following amendment to the Ohio regulatory program, as submitted to OSM on June 15, 1990, and amended on November 15, 1990, is approved effective April 19, 1991: Revised Program Amendment Number 41 which revises provisions of the Ohio regulatory program at Ohio Administrative Code (OAC) sections 1501:13-4-03(A), (B), and (C), 1501:13-5-01(D) and letter of interpretation dated April 1, 1991 (Administrative Record Number OH-1498), (E)(8), (F), (G)(5), and (H)(5), and 1501:13-14-02(A)(8) concerning control and ownership; 1501:13-5-02 concerning improvidently issued permits; 1501:13-14-02(C)(7), (D)(1)(c), and (I) concerning enforcement activities; and 1501:13-5-01(A)(4)(a) concerning public inspection of permit applications; and revision of paragraph (E)(6) of section 1513.07 of the Ohio Revised Code to delete language inconsistent with Ohio's rules regarding ownership and control.

[FR Doc. 91-9189 Filed 4-18-91; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense is amending this part to place the section on payment and liability for certain potentially excludable services in the correct section of § 199.4. The document is an administrative amendment.

EFFECTIVE DATE: April 19, 1991.

ADDRESSES: OCHAMPUS, Aurora, CO 80045.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Armijo, telephone (303) 361-3630.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 199

Administrative practice and procedure; Claims; Fraud; Handicapped; Health insurance; Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, and 5 U.S.C. 301.

2. Section 199.4 is amended by moving paragraph (h) following paragraph (g)(41) note and before paragraph (g)(41)(i) and placing it after paragraph (g)(73) note.

Dated: April 15, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-9239 Filed 4-19-91; 8:45 am]
BILLING CODE 3810-01-M

National Security Agency/Central Security Service

32 CFR Part 299a

[NSA Reg. No. 10-35]

Privacy Act Systems of Records—Disclosures and Amendment Procedures—Specific Exemptions, National Security Agency

AGENCY: National Security Agency/Central Security Service (NSA/CSS), DOD.

ACTION: Final rule.

SUMMARY: The National Security Agency/Central Security Service (NSA/CSS) is publishing a final rule for one exempt record system subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

EFFECTIVE DATE: April 19, 1991.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Schuyler, Office of Policy, National Security Agency, Ft. George G. Meade, MD 20755-6000. Telephone (301) 688-6527.

SUPPLEMENTARY INFORMATION: On March 6, 1991, at 56 FR 9314 of the Federal Register the National Security Agency/Central Security Service published one new exemption rule for a new record system. No comments were received, therefore, the National Security Agency/Central Security Service is adopting the exemption rule.

List of Subjects in 32 CFR Part 299a

Privacy Act, Systems of records—Accordingly, NSA/CSS is adding an exemption rule to 32 CFR part 299a as follows:

PART 299a—PRIVACY ACT SYSTEMS OF RECORDS—DISCLOSURES AND AMENDMENT PROCEDURES—SPECIFIC EXEMPTIONS, NATIONAL SECURITY AGENCY

1. Authority citation for 32 CFR part 299a continues to read as follows:

Authority: 5 U.S.C. 552a, the Privacy Act of 1974; 5 U.S.C. 552, the Freedom of Information Act as amended by Pub. L. 93-502; Pub. L. 86-36; Pub. L. 88-290; and 18 U.S.C. 798.

2. Section 299a.10 is amended by adding a new paragraph (b)(18) as follows:

§ 299a.10 Specific exemptions.

* * * * *

(b) Systems of records subject to specific exemptions:

* * * * *

(18) *System identification and name*—GNSA18, NSA/CSS Operations Files.

Exemption—Portions of this record system may be exempted from subsections of 5 U.S.C. 552a (c)(3), (d)(1)—(5), (e)(4)(G)—(I), and (f)(1)—(5).

Authority—5 U.S.C. 552a(k) (1), (2) and (5).

Reasons—Subsection (c)(3) because there may be occasions when making an accounting available to the individual named in the record at his or her request, would reveal classified information. The release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies.

Subsection (d) because granting access and/or subsequent amendment to the record would reveal classified information. It may also alert a subject to the fact that an investigation of that individual is taking place, and might weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy. NSA/CSS may refuse to confirm or deny the existence of a particular record because to do so would reveal classified information.

Subsection (e)(4)(G), (e)(4)(H), and (e)(4)(I). Although NSA/CSS has published procedures whereby an individual can be notified if a particular record system contains information about themselves; how to gain access to that information; and the source of the information, there may be occasions when confirming that a record exists, granting access, or giving out the source of the information would reveal classified information.

Subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual. The confirming or denying might, in itself, provide an answer to that individual relating to an on-going criminal investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system. Also, because this record system is exempt from the individual access provisions of subsection (d).

Dated: April 15, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-9237 Filed 4-18-91; 8:45 am]

BILLING CODE 3810-01

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CCGD8-91-09]

Special Local Regulations: Neches River Festival Regatta on the Neches River, Beaumont, TX

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special local regulations are being adopted for the Neches River Festival Regatta. This event will be held on 20 and 21 April 1991 from 8 a.m. until 6 p.m. on the Neches River at Beaumont, TX. These regulations are needed to provide for the safety of life on the navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 20 April 1991 at 7:30 a.m. and terminate on 21 April 1991 at 6:30 p.m.

FOR FURTHER INFORMATION CONTACT: LT Scott P. LaRochelle, Operations Officer, U.S. Coast Guard Group Galveston. Tel: (409) 766-5603.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 533, a notice of proposed rulemaking has not been published and good cause exists for making them effective in less than 30 days from publication. Following normal rulemaking procedures would have been impracticable. The details of this event were not finalized until 30 March 1991 and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

Nevertheless, interested persons wishing to comment may do so by submitting written views, data or arguments. Commenters should include their name and address, identify this notice (CCGD8-91-09) and the specific section of this proposal to which the comments apply, and give reasons for each comment. Receipt of comments will be acknowledged if a stamped self-addressed envelope is enclosed. The regulations may change in light of comments received.

Drafting Information

The drafters of this regulation are LT Scott P. LaRochelle, Project Officer, Coast Guard Group Galveston, Texas, and LT J.A. Wilson, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation

The marine event requiring this regulation is a powered boat race called

the "Neches River Festival Regatta." This event is sponsored by the Neches Boat Club, Inc. It will consist of approximately 80–120 inboard and outboard drag boats from 17 to 22 Ft. in length operating at high speeds. The course to be followed by the race will be marked by patrol vessels positioned at various points along its route. No spectator boats are expected for this event. While viewing the vent at any point outside the regulated area is not prohibited, spectators will be encouraged to congregate within areas designated by the sponsor. Non-participating vessels will be permitted to transit the area at *NO WAKE SPEED* every hour on the hour with the permission of the patrol commander.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T8–91–09 is added to read as follows:

§ 100.35–T8–91–09 Beaumont, TX.

(a) *Regulated area.* The following area will be closed to all vessel traffic: The Neches River from Colliers Ferry Landing to Lawson's Crossing at the end of Pine Street except vessels participating in the Neches River Festival Regatta.

(b) *Special Local Regulation.* All persons and/or vessels not registered with the sponsors as participants or official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol the event.

(1) No spectator shall anchor, block, loiter in or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(2) When hailed and or signaled, by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given; failure to do so may result in a citation.

(3) The patrol commander is empowered to forbid and control the movement of all vessels in the regulated area. He may terminate the event at any time it is deemed necessary for the protection of life and/or property. He maybe reached on VHF–FM Channel 16, when required by the call sign "PATCOM."

(c) *Effective Dates.* These regulations will be effective from 7:30 a.m. on 20 April 1991 and terminate at 6:30 p.m. on 21 April 1991.

Dated: April 8, 1991.

James M. Loy,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 91–9227 Filed 4–18–91; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD7–90–08]

Drawbridge Operation Regulations; Savannah River, Georgia

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the owner of the railroad bridge at Clyo, Georgia, CSX Transportation, the Coast Guard is changing the regulations governing the operation of the railroad bridge by requiring greater advance notice be given before opening the bridge for passage of vessel traffic. This change is being made because of a steady decrease in requests for opening of the draw over the past four years. This action will accommodate the needs of rail traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on May 20, 1991.

FOR FURTHER INFORMATION CONTACT: Gary D. Pruitt (305) 536–4103.

SUPPLEMENTARY INFORMATION: On April 26, 1990 the Coast Guard published a proposed rule (55 FR 17645) concerning this change. Interested parties were given until June 11, 1990 to comment.

Drafting Information

The drafters of these regulations are Bridge Administration Specialist Gary D. Pruitt, project officer, and Lieutenant Genelle G. Tanos, project attorney.

Discussion of Comments

No comments were received on the proposed change. The final rule contains one change from the proposed rule. The telephone number that was published in the proposed rule is no longer a valid number and has, therefore, been changed to reflect the correct number. Otherwise, the final rule is unchanged from the proposed rule.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This regulation change is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this change is expected to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the bridge seldom opens and the final rule only increases the advance notice required to arrange for an opening of the bridge for vessel traffic. Since the economic impact is expected to be minimal, the Coast Guard certifies that it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.371(c) is revised to read as follows:

§ 117.371 Savannah River.

* * * * *

(c) The draw of the CSX Transportation railroad bridge, mile 60.9, near Clyo, Georgia, shall open on signal if at least 48 hours advance notice is given. Openings can be arranged by contacting CSX Transportation on Channel 16 VHF or by telephone at 1 800 232–0146. VHF radiotelephone communications will be maintained at the dispatcher's office in Savannah, Georgia.

* * * * *

Dated: April 9, 1991.

Robert E. Kramek,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 91-9228 Filed 4-18-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD2-91-04]

Drawbridge Operation Regulations; Green River, Kentucky

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule amends the regulations for the Geen River, Kentucky because the Seaboard System Railroad Drawbridge, at Livermore, Kentucky, Mile 71.2, has been removed. The regulation will still apply to the Seaboard System Railroad Drawbridge, at Smallhouse, Mile 79.6. Notice and public procedure have been omitted from this action due to the removal of the bridge concerned.

EFFECTIVE DATE: April 19, 1991.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, (314) 539-3724.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice on proposed rulemaking was not published for this action and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying the effective date of this action will serve no purpose as the bridge in question no longer exists.

Discussion

This action amends a regulation which contains drawbridge operations for a bridge that no longer exists. The regulation is still applicable to the Seaboard System Railroad Bridge, Mile 79.6 at Smallhouse.

Drafting Information

The drafters of this notice are Wanda G. Renshaw, Project Officer, and Lieutenant M. A. Suire, Project Attorney, 1222 Spruce Street, St. Louis, MO 63103-2832 (314) 539-3727.

Federalism Assessment and Certification

This action has been analyzed in accordance with the principles and criteria outlined in Executive Order 12612. It has been determined that this action does not have sufficient federalism implications to warrant preparation of a Federalism Assessment. This rule removes the regulations for a nonexistent drawbridge.

Environmental Assessment and Certification

This action has been reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with paragraph 2.B.2.g.(5) of the NEPA Implementing Procedures, COMDTINST M16475.1B. A copy of the Categorical Exclusion Certification is available for review on the docket.

Economic Assessment and Certification

This rule has been reviewed under the provisions of Executive Order 12291 and determined not to be a major rule. In addition, this rule is considered to be nonsignificant under the guidelines of DOT Order 2100.5 dated May 22, 1980, Policies and Procedures for Simplification, Analysis, and Review of Regulations. An economic evaluation has not been conducted and is deemed unnecessary as this action has no economic consequences. Because no notice of proposed rulemaking is required under 5 U.S.C. 553, this action is exempt from the Regulatory Flexibility Act, 5 U.S.C. 605(b). However, this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulation

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05(g).

2. Part 117 is amended by revising § 117.415(b) to read as follows:

§ 117.415 Green River.

* * * * *

(b) The draw of the Seaboard System Railroad bridge, Mile 79.6 at Small-house, is normally maintained in the fully open position and a vessel may pass through the draw without further signals. When the draw is in the closed position, it shall open on signal when there is 40 feet or less of vertical clearance. When the vertical clearance is more than 40 feet, at least four hours notice shall be given. During this period, if the drawtender is informed at the time the vessel passes through the draw that the vessel will return within four hours, the drawtender shall remain on duty until the vessel returns but is not required to remain for longer than four hours. The owners of, or agencies controlling, the bridge shall arrange for ready telephone communication with the authorized representative at any time from the bridge or its immediate vicinity.

* * * * *

Dated: April 12, 1991.

W. J. Ecker,

Rear Admiral (Lower Half), United States Coast Guard Commander, Second Coast Guard District.

[FR Doc. 91-9230 Filed 4-18-91; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD8-90-29]

Drawbridge Operation Regulations; Tickfaw River, Louisiana

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulation governing the operation of the swing span bridge on LA22 over the Tickfaw River, mile 7.2, at Killian, Livingston Parish, Louisiana. The change will require the bridge to open only on the hour and half-hour to pass navigation from 7 a.m. to 11 p.m. This new regulation is in addition to the present regulation which requires at least four hours notice for openings between 11 p.m. and 7 a.m. This additional regulation is being made because residents and boat owners in the area desire operation of the bridge on a regulated basis between 7 a.m. and 11 p.m. for the sake of local convenience. At the same time, the regulation will still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on May 20, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, Eighth Coast Guard District, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION: On February 8, 1991, the Coast Guard published a proposed rule (56 FR 5166) concerning this amendment. The Commander, Eighth Coast Guard District, also published the proposal as a Public Notice dated 26 February 1991. In each notice interested parties were

given until March 25, 1991 to submit comments.

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT J.A. Wilson, project attorney.

Discussion of Comments

Two letters were received in response to Public Notice No. CGD8–04–91 issued on 26 February 1991. The Federal Emergency Management Agency offered no objection to the proposed rule. The other comment suggested that the proposed rule would be of no advantage to mariners that transit the waterway and could cause some delays. The majority of bridge openings are for local recreational fishing vessels. These mariners can easily schedule their arrivals at the bridge to avoid delays, as can overland traffic. In view of the above, the Coast Guard has decided that the final rule will remain unchanged from the proposed rule.

Federalism Implications

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this regulation has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is that mariners requiring the bridge openings are repeat users of the waterway and scheduling their arrival at the bridge at the appointed time during the regulated period will eliminate delays in their passage through the bridge and should involve little or no additional expenses to them. Since the economic impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking document.

List of Subjects in 33 CFR Part 177

Bridges.

Regulations

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.506 is revised to read as follows:

§ 117.506 Tickfaw River.

The draw of the S22 bridge, mile 7.2 at Killian, need open only on the hour and half-hour from 7 a.m. to 11 p.m. From 11 p.m. to 7 a.m. the draw shall open on signal if at least four hours notice is given. The draw shall open on signal for an emergency or if a temporary surge in waterway traffic should occur.

Dated: April 8, 1991.

J.M. Loy,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 91–9229 Filed 4–18–91; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AE56

Statutory Changes Affecting the Vocational Rehabilitation Program

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations; correction.

SUMMARY: On April 11, 1991, on pages 14648–14649, the Department of Veterans Affairs published a final rule to amend its vocational rehabilitation regulations (38 CFR part 21) to implement the provisions of the Veterans' Benefits Amendments of 1989 that eliminate requirements for reducing payment of an allowance to veterans in non-college degree programs when the veteran is absent for more than 30 days during a 12-month period. In the preamble (page 14648), VA announced an effective date of May 13, 1991, which was incorrect.

VA regrets the error which is hereby corrected by this notice.

DATES: The regulatory amendments to §§ 21.342 and 21.344 (affecting leaves of absence for veterans in non-college degree programs) are retroactively effective December 18, 1989, the date of enactment. Amendments to § 21.272 (the work-study program) are retroactively effective May 1, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Morris Triestman, (202) 233–2691.

Dated: April 12, 1991.

B. Michael Berger,

Records Management Service.

[FR Doc. 91–9173 Filed 4–18–91; 8:45 am]

BILLING CODE 8320–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88–473; RM–6388]

Radio Broadcasting Services; Prescott Valley, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 252C2 to Prescott Valley, Arizona, in response to a petition for rule making filed on behalf of Lucky Communications, Inc., thereby providing that community with its second local FM broadcast service. See 53 FR 40919, October 19, 1988. Coordinates used for Channel 252C2 at Prescott Valley are 34–36–36 and 112–18–54. With this action, the proceeding is terminated.

DATES: Effective May 30, 1991; the window period for filing applications on Channel 252C2 at Prescott Valley, Arizona, will open on May 31, 1991, and close on July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–473, adopted April 1, 1991, and released April 15, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased

from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Channel 252C2 at Prescott Valley.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–9164 Filed 4–18–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–21; RM–7126]

Radio Broadcasting Services; Beaumont, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 265A to Beaumont, California, as that community's first local broadcast service, in response to a petition for rule making filed on behalf of Eastland Broadcasting Corp. See 55 FR 4206, February 7, 1990. Coordinates used for Channel 265A at Beaumont are 33–56–06 and 116–58–24. With this action, the proceeding is terminated.

DATES: Effective May 31, 1991; the window period for filing applications on Channel 265A, Beaumont, California, will open on June 3, 1991, and close on July 3, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632–0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–21, adopted April 1, 1991, and released April 16, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 265A, Beaumont.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–9286 Filed 4–18–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

Radio Broadcasting Services; Various Communities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to Revision of § 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment, 54 FR 11953, March 23, 1989.

EFFECTIVE DATE: April 12, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order, adopted March 22, 1991, and released April 12, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 214C and adding Channel 241C1 at Greeley.

3. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 279C and adding Channel 279C1 at Gainesville; removing Channel 297C and adding Channel 297C1 at Jacksonville; removing Channel 251C1 and adding Channel 251C2 at Live Oak; removing Channel 256C and adding Channel 256C1 at Miami; removing Channel 235C and adding Channel 235C1 at Tallahassee; and removing Channel 300C and adding Channel 300C1 at West Palm Beach.

4. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 287C and adding Channel 287C1 at Macon.

5. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 243C and adding Channel 243C1 at Lewiston.

6. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channels 251C, 275C and 283C and adding Channels 251C1, 275C1 and 283C1 at Cedar Rapids; and removing Channels 238C and 250C and adding Channels 238C1 and 250C1 at Sioux City.

7. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 245C and adding Channel 245C1 at Pittsburg.

8. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 236C and adding Channel 236C1 at Detroit Lakes; and removing Channel 235C and adding Channel 235C1 At Duluth.

9. Section 73.202(b), the Table of FM Allotments under Misssissippi, is amended by removing Channel 254C and adding Channel 254C1 at Vicksburg.

10. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by removing Channel 229C and 251C and adding Channels 229C1 and 251C1 at St. Louis.

11. Section 73.202(b), the Table of FM Allotments under Montana, is amended by removing Channel 246C1 and adding Channel 246C2 at Billings; and removing Channel 291C and adding Channel 291C1 at Great Falls.

12. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 234C and adding Channel 234C1 at Norfolk; removing Channel 278C and adding Channel 278C1 at North Platte; and removing Channel 245C and adding Channel 245C1 at Seward.

13. Section 73.202(b), the Table of FM Allotments under New Jersey, is amended by removing Channel 279B and adding Channel 279B1 at Newton.

14. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 293C and adding Channel 293C1 at Roswell.

15. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by removing Channel 245C and adding Channel 245C1 at Enid.

16. Section 73.202(b), the Table of FM Allotments under Tennessee, is amended by removing Channel 281C and adding Channel 281C1 at Jackson.

17. Section 73.202(b), the Table of FM Allotments under Texas, is amended by removing Channel 292C3 and adding Channel 292A at Belton; removing Channel 242C and adding Channel 242C1 and Del Rio; removing Channel 300C and adding Channel 300C1 at Edinburg; removing Channel 245C and adding Channel 245C1 at El Campo; removing Channel 273C and adding Channel 273C1 at Hillsboro; removing Channel 234C and adding Channel 234C1 at San Angelo; removing Channel 241C and adding Channel 241C1 at San Antonio; and removing Channel 254C and adding Channel 254C1 at Victoria.

18. Section 73.202(b), the Table of FM Allotments under Utah, is amended by removing Channel 235C and adding Channel 235C1 at Cedar City.

19. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by removing Channel 242C and adding Channel 242C1 at Martinsville.

20. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Channel 260B and adding Channel 260B1 at Janesville.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Divsiion, Mass Media Bureau.

[FR Doc. 91-9032 Filed 4-18-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-650; RM-7545]

Radio Broadcasting Services; Augusta, KS.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 283C2 for Channel 283A at Augusta, Kansas, and modifies the construction permit for Channel 283A to specify operation on Channel 283C2, in response to a petition filed by Gregory Ray Strickline. See 56 FR 2779, January 17, 1991. The coordinates for Channel 283C2 are 37-48-11 and 96-57-24. With this action, the proceeding is terminated.

EFFECTIVE DATE: May 30, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-650, adopted April 1, 1991, and released April 15, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments Kansas, is amended by removing Channel 283A and adding Channel 283C2 at Augusta.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-9165 Filed 4-18-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90-593; RM-7538]

Radio Broadcasting Services; Boyne City, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 228C2 for Channel 228A at Boyne City, Michigan, and modifies the license for Station WCLX(FM) to specify the higher class channel, in response to a petition filed by Biederman Investments, Inc. See 55 FR 51133, December 12, 1990. Canadian concurrence has been obtained for this allotment. The coordinates for Channel 228C2 are 45-10-44 and 85-05-42. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 30, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-593, adopted April 1, 1991, and released April 15, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452-1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 228A and adding Channel 228C2 at Boyne City.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-9164 Filed 4-18-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-470; RM-5960]

Radio Broadcasting Services; Marlette, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 223A to Marlette, Michigan, as that community's first FM broadcast service, in response to a petition filed by D.J. Fox. *See* FR 42464, November 5, 1987. Canadian concurrence has been obtained for the allotment of Channel

223A at Marlette at Coordinates 43–16–37 and 82–59–18. There is a site restriction 9.4 kilometers (5.8 miles) southeast of the community, to prevent a conflict with Station WDZZ–FM, Channel 224A, Flint, Michigan.

DATES: Effective May 30, 1991; the window period for filing applications will open on May 31, 1991, and close on July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88–470, adopted April 1, 1991, and released April 16, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Marlette, Channel 223A.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–9285 Filed 4–18–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–458; RM–7475]

Radio Broadcasting Services; Taos, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Taos County Radio, substitutes Channel 260C for Channel 260C2 at Taos, New Mexico, and modifies Station KRBJ's construction permit to specify operation on the higher powered channel. See 55 FR 43148, October 26, 1990. Channel 260C can be allotted to Taos in compliance with the Commission's minimum distance separation requirements with a site restriction 28.6 kilometers (17.7 miles) south to accommodate petitioner's desired transmitter site. The coordinates for Channel 260C at Taos are North Latitude 36–09–30 and West Longitude 105–29–30. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–458, adopted April 1, 1991, and released April 16, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel 260C2 and adding Channel 260C at Taos.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–9287 Filed 4–18–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–525; RM–7505]

Radio Broadcasting Services; Creswell, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Jed Broadcasting Co. of Oregon, Ltd, substitutes Channel 237C3 for Channel 237A at Creswell, Oregon, and modifies the license of Station KAVE to specify operation on the higher powered channel. See 55 FR 47346, November 13, 1990. Channel 237C3 can be allotted to Creswell in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.3 kilometers (0.2 miles) east to accommodate petitioner's desired transmitter site. The coordinates for Channel 237C3 at Creswell are North Latitude 43–55–09 and West Longitude 123–00–59. With this action, this proceeding is terminated.

EFFECTIVE DATE: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–525, adopted April 1, 1991, and released April 16, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by removing Channel 237A and adding Channel 237C3 at Creswell.

Federal Communications Commission

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–9289 Filed 4–18–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–615; RM–7552]

Radio Broadcasting Services; Adams, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 291A to Adams, Wisconsin, as that community's first local broadcast

service in response to a petition filed by Karle Roekle. See 55 FR 52851, December 24, 1990. The coordinates for Channel 291A are 43–57–06 and 89–49–00. With this action, this proceeding is terminated.

DATES: Effective May 30, 1991; the window period for filing applications will open on May 31, 1991, and close on July 1, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–615, adopted April 1, 1991, and released April 15, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, 1714 21st Street, NW., Washington, DC 20036, (202) 452–1422.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Adams, Channel 291A.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–9163 Filed 4–18–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–451; RM–7237]

Radio Broadcasting Services; Laramie, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Jay Lellman, allots Channel 283C2 at Laramie, Wyoming, as that community's fourth local FM service. See 55 FR 43002, October 25, 1990. Channel 283C2 can be allotted to Laramie in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.9 kilometer (0.6 mile) north of the community to avoid a short-spacing to the construction permit for Station KQKS(FM), Channel 282C1 at Longmont, Colorado. Coordinates for Channel 283C2 are North Latitude 41–19–09 and West Longitude 105–34–52. With this action, this proceeding is terminated.

DATES: Effective May 31, 1991. The window period for filing applications will open on June 3, 1991, and close July 3, 1991.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–451, adopted April 2, 1991, and released April 16, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Channel 283C2 at Laramie.

Federal Communications Commission

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–9288 Filed 4–18–91; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 90

[FCC 91–96]

Allocation of 901–902/940–941 MHz Frequencies to the Private Land Mobile Radio Services (PLMRS)

AGENCY: Federal Communications Commission.

ACTION: Final rule: denial of petition for reconsideration.

SUMMARY: The Commission has upheld a decision by the Chief Engineer that denied a petition to allocate the 901–902 and 940–941 MHz bands for PLMRS. The intended effect of the action is to hold this spectrum in reserve until the Commission can obtain a single, inclusive record on the best use of this spectrum.

EFFECTIVE DATE: May 20, 1991.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Spectrum Engineering Division, Office of Engineering and Technology (202) 653–8114.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, FCC 91–96, adopted March 25, 1991, and released April 5, 1991. The full text of Commission decisions are available for inspection and copying from 9 to 4:30 in the FCC Docket's reference room (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center (202) 452–1422, 1114 21st Street, NW., Washington DC 20036.

Summary of Memorandum Opinion and Order

On June 18, 1990, the Chief Engineer, by delegated authority, denied a petition by the American SMR Network Association, Inc. (ASNA) to initiate a proceeding to consider allocating the 901–902 and 940–941 MHZ bands for the PLMRS. ASNA requested reconsideration, in which it argued that the Chief Engineer's decision not to initiate a proceeding fails to respond to a current critical need for additional spectrum for PLMRS expansion.

Denying ASNA's reconsideration, the Commission stated that it recognized the growing demand for PLMRS and that service providers are facing increasing difficulty in meeting user needs in the congested areas. The Commission pointed out, however, that PLMRS providers could attempt to meet the increasing demands for service in congested areas through the use of more efficient technology, such as digital, to increase the communications capacity of current PLMRS allocations.

Ordering Clause

Accordingly, it is ordered that, pursuant to the authority of sections 4(i), 301 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301 and 303(r), the petition for reconsideration filed by American SMR Network Association, Inc. is denied.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-9291 Filed 4-18-91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81-2; Notice 10]

RIN 2127-AD35

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice requires that multipurpose passenger vehicles, trucks, and buses, whose overall width is less than 80 inches and whose GVWR is 10,000 pounds or less, be equipped with a center high-mounted stop lamp. This type of lamp has been required on new passenger cars since September 1, 1985. The agency has decided that similar crash-reduction and crash-severity reduction benefits will be attainable by extension of this requirement to other motor vehicles. The requirements are identical to those for passenger cars, except that a split CHMSL (*i.e.*, two smaller lamps meeting the requirements for a single lamp) will be allowed on vehicles whose rear vertical centerline falls between movable body panels such as doors.

DATES: The effective date is September 1, 1993. However, optional compliance may begin September 1, 1992.

Any petitions for reconsideration of this rule must be received by NHTSA not later than May 20, 1991.

ADDRESSES: Any petitions for reconsideration should refer to Docket No. 81-2; Notice 10, and be submitted to: Administrator, NHTSA, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Richard Reed, Office of Rulemaking, NHTSA (202-366-4924).

SUPPLEMENTARY INFORMATION: This rule is based upon a notice of proposed rulemaking published on May 31, 1990 (55 FR 22039). Under the proposal, the center high-mounted stop lamp, presently required only on passenger cars, would be extended to the NHTSA-defined vehicle categories of multipurpose passenger vehicles, trucks, and buses, more specifically, those whose overall width is less than 80 inches, and whose GVWR is 10,000 pounds or less. Thus, the lamp would be required on all pickup trucks, vans, buses, sport-utility vehicles, truck-based station wagons, and motor homes within these width and weight parameters, and a variety of other types of trucks as well. For purposes of further discussion, NHTSA will use the term "light truck CHMSL" to identify the subject of this rulemaking.

Comments were received from the following motor vehicle manufacturers: American Suzuki Motor Corporation, Chrysler Corporation, Ford Motor Company, General Motors Corporation, Isuzu Motors Ltd., Mazda Research and Development of North America, Inc., Nissan Research and Development, Inc., Toyota Motor Corporate Services of North America, Inc., and Volkswagen of America, Inc. Final-stage manufacturers who commented were Gem Top East, Inc., Grote Manufacturing Company, Grumman Olson, Kois Brothers Equipment Company, Meyer Products, and Tailgater, Inc. Comments were received from the following lighting manufacturers: Hella, and K. G. Hueck & Company. Trade, public interest, and governmental associations submitting comments were: American Automobile Association, Citizens Concerned for Highway Safety, National Association of Governors Highway Safety Representatives, Recreational Vehicle Industry Association, National Automobile Dealers Association, National Truck Equipment Association, Truck Safety Equipment Institute, Insurance Institute for Highway Safety, and Coalition for Consumer Safety. Finally, comments were received from Spectrum Research and Development, Inc., and from numerous individuals.

Comments identified a number of issues relevant to the rulemaking, and the agency will discuss each of these in turn.

Adequacy of Research to Show Reduction in Rear End Collisions

The agency discussed the issue of the safety need for a reduction in rear end collisions at length in the NPRM. Interested readers are referred to that document for a full discussion. In brief, NHTSA cited accident statistics, the reduction in rear end collisions that it believes is attributable to the center lamp on passenger cars, and data indicating that a similar beneficial effect can be realized through installation of the center high-mounted stop lamp ("CHMSL") on vehicles other than passenger cars.

Certain parts of that discussion elicited comments, particularly with respect to the adequacy of the agency's evaluation of passenger car CHMSL effectiveness, and the field study NHTSA performed before embarking on the rulemaking to extend the CHMSL to other vehicles.

Specifically, the most recent follow-up study (DOT HS 807 442 "An Evaluation of Center High Mounted Stop Lamps Based on 1987 Data") indicates that cars equipped with the CHMSL are 17 percent less likely to be struck in the rear while braking than cars without the lamp.

Interested in learning whether a similar reduction might occur if vehicles other than passenger cars were equipped with a CHMSL, NHTSA contracted with the National Public Services Research Institute (NPSRI) to conduct a study with respect to pickup trucks, mini vans, full size cargo type vans, and trucks with roll-back doors. A final report was rendered in May 1989, "The Effect of the Center High Mounted Stop Lamp on Vans and Trucks" (DOT HS 807 506). This report has been placed in the docket. The results of this study showed an average improvement in brake reaction time of 0.09 second when the CHMSL was used. In a related experiment with a passenger car equipped with the CHMSL, the reduction in reaction time was 0.11 second. NHTSA decided that there is no statistically significant difference between the 0.11 second reduction in response time for passenger cars and the 0.09 second reduction in response time for vans/light trucks, indicating that the CHMSL would also be effective when installed on vehicles other than passenger cars. The agency sought comment on whether these results indicate further that the level of crash prevention effectiveness of CHMSLs installed on light trucks would be similar to that found for passenger car CHMSLs.

As stated above, the conclusion that light truck CHMSL's will be effective in preventing crashes and reducing the severity of those that do occur is based on (1) results of a series of tests conducted by the NPSRI on the reduction in mean brake response time of drivers following various types of CHMSL-equipped light trucks, as compared to the same trucks without CHMSLs, (2) tests of brake reaction times of drivers following a CHMSL and non-CHMSL passenger cars that were conducted by the same company using the same procedures, and (3) the proven on-road effectiveness of passenger car CHMSLs. The test results showed that

the CHMSLs produced statistically significant reductions in following-driver brake response time of .09 second for light trucks and .11 second for passenger cars. NHTSA stated that it did not consider this to be a significant difference and concluded that there was reason to expect that CHMSL's installed on light trucks would produce results similar to those found for passenger cars.

However, several manufacturers and a number of individuals spoke against or questioned the adequacy of the research to support requiring light truck CHMSL's. Ford disagreed with the derivation of the .09 second difference, and that company, Chrysler, and the National Truck Equipment Association questioned whether such a small improvement in mean brake response time of following drivers attributable to light truck CHMSL's was meaningful with respect to motor vehicle safety. They also noted the inconsistency of results for the different truck types and questioned the propriety of using the average result for all tests to support a CHMSL requirement pertaining to all light trucks. Ford and Chrysler also did not agree with the agency's conclusion that the similar results of the NPSRI light truck and automobile studies indicated that the benefits which could be expected from CHMSL's on light trucks would be similar to those found for passenger cars. They also stated reasons that they felt CHMSL's on light trucks would not be so effective as those on passenger cars. These reasons were related to the positions of the CHMSL and the standard brake lamps, and to the behavior of following drivers as influenced by truck rear end design, including the mounting height of standard brake lamps.

Some of the commenters remarked that there is a need for additional research because the NPSRI study stated, "No valid conclusions as to the collision-reduction benefit of the CHMSL's on vans and trucks can be offered on the basis of the data collected in this study." The agency disagrees with these comments. The NPSRI study was not designed to estimate a collision-reduction benefit. Rather, it was designed to determine the relationship between brake response time (BRT) and CHMSL's. The study accomplished this purpose, establishing a positive BRT-CHMSL relationship. The agency concludes that there is sufficient justification for issuing a requirement for CHMSL's on light trucks based on the similar braking response results found by NPSRI for CHMSL-equipped passenger cars and light trucks and the on-road benefits realized by CHMSL-equipped cars. Clearly, reductions in BRT will lead to reductions in collisions.

Several commenters questioned the accuracy and significance of the NPSRI study, stating that the BRT results were not consistent among the four vehicle types. The study clearly stated that the BRT results for each of the individual "cells" (*e.g.*, pickup trucks with triangulation, cargo vans with fixation) were not themselves statistically significant, only that their cumulative mean reduction in BRT of 0.09 second was. This overall reduction is based upon 1087 observations, 733 with the CHMSL and 354 without. Of all the studies of BRT measured in trapped car studies, the NPSRI study was the most rigorous, controlling for speed, headway, light conditions, and roadway geometry. In addition, the NSPRI study collected significantly more data than any other study, including those cited by commenters. Thus, the agency believes that CHMSL's will be effective, although not necessarily equally effective, on the various types of light trucks. In order to reflect the possibility that the CHMSL may be somewhat less effective on light trucks than on passenger cars, the agency now estimates benefits more conservatively than it first estimated them. It is assumed that light truck CHMSL effectiveness could be lower, instead of equivalent to that found for passenger cars, by an amount proportional to the difference in the effect that these technologies were found to have on the brake response times of following drivers—.09/.11, or 82% as effective as for passenger cars.

Ford and Chrysler argued that a field study, along the lines of those conducted to support the passenger CHMSL requirement, was needed to support a light truck CHMSL regulation. The agency does not believe that a field study is necessary. The concept of the center lamp has been validated by the field studies that led to its adoption for passenger cars. The BRT tests are an acceptable surrogate for a field study in demonstrating that the concept remains valid for light trucks. Further, a field study would take 2–3 years to design, conduct, and analyze before proposing a rule based on these results. This would mean that a requirement for CHMSLs on light trucks, when providing for adequate leadtime, could be delayed as much as 3 years beyond the September 1, 1993 effective date that is specified in this final rule. As stated above, the agency believes the benefits of CHMSLs have been proven. Therefore, it will not delay implementation of a light truck CHMSL requirement more than is reasonably necessary to permit manufacturers to efficiently schedule their installation in their various truck models.

Location of the Lamp on Vehicles Other Than Passenger Cars

Issues relating to location concerned mounting the lamp outside the proposed range of 34 to 84 inches above the road surface, and the alleged impracticability of mounting the lamp on vehicles with double rear doors, on pickups with caps, and on certain types of utility and open-bodied vehicles.

On passenger cars, the center high-mounted stop lamp is located on the vehicle's vertical centerline, at a height not lower than 3 inches below the rear window. In the NHTSA study of vehicles other than passenger cars, two alternative locations were chosen for each vehicle type tested. On the pickup truck involved in the study, one location of the lamp was in the center at the top of the cab, and the other was in the center at the top of the tailgate (this was a Dodge Ram vehicle, mid-size, without a cap). The minivan was a Ford Aerostar, with one location of the lamp in the center on the roof line, and with the other location of the lamp in the center below the rear window. A Ford Econoline without a rear window served as the full-size cargo van. The alternative lamp locations for this type of vehicle were in the center at the eye level of a following driver, and at a point in the center halfway between the height of the stop lamps, and the roof line. On the straight truck with a roll-back door, a lamp was centered halfway between the road surface and the top of the vehicle. The other configuration was two lamps, one at each side of the vehicle, at the same height halfway between the road surface and the height of the vehicle.

Before initiating rulemaking, the agency asked several manufacturers of light trucks to comment on potential locations for the lamp. Nissan recommended that the lamp be installed near or on the roof. Mazda suggested that there could be as many as four installation locations for pickups, including the upper part of the rear window, and between the roof and rear window. Chrysler argued that no location was acceptable for pickups, as well as expressing concern that a high position might interfere with the identification lamps that are used to indicate wide vehicles. Grumman Olson provided detailed comments on all types of vehicles.

When all the comments were collated, no consensus emerged on a location for

any type of vehicle. There appeared to be so many configurations of vehicles whose overall width is less than 80 inches, and whose GVWR is 10,000 pounds or less that the locational requirements cannot be specific. General Motors, however, provided a recommendation that afforded a basis for the eventual proposal: That a broad specification be adopted, allowing the center of the lens to be mounted at any point on the centerline from 34 to 84 inches above the road surface. The agency proposed this general requirement for the location of the lamp, believing that a minimum specification of 34 inches would enable manufacturers to install the lamp on certain vehicles where higher locations would not be practicable, and yet assure that the lamp would not be mounted much below the eye level of most drivers. NHTSA noted that vans of standard size manufactured by Ford, GM, and Chrysler are approximately 80 inches in height. With a maximum mounting height specification of 84 inches, manufacturers could install the center lamp above double rear doors on vehicles with such a rear configuration; in fact, NHTSA thought that this might be the most practicable location for the lamp.

However, at such a height, it might be necessary to propose additional photometric specifications for downward visibility of the lamp. At present, there is a photometric requirement only for 5 degrees down. Given the probability that lamps on vehicles other than passenger cars may be mounted at a greater height than on passenger cars, a photometric requirement for 10 degrees down, and even 15 degrees down, might be justified. NHTSA invited specific comments on this point. The agency appreciated that problems might be encountered with complex vehicle designs for which even this general specification might not allow a satisfactory location, and therefore asked for specific comments on this point.

The agency also expressed its concern that additions such as a cap to a new or used pickup truck could reduce or eliminate the benefits of the center lamp. Such an addition could also violate the prohibition in the National Traffic and Motor Vehicle Safety Act against rendering Federally-required safety equipment inoperative. If a cap were added to a pickup before its first sale for purposes other than resale and that cap rendered the center lamp noncompliant, the dealer selling the pickup would be liable for a civil penalty. If the cap were added to a pickup, after its first sale, by a vehicle manufacturer, distributor, dealer or vehicle repair business, so as to knowingly render the lamp partially or wholly inoperative, that individual or business also would be liable for a civil penalty. In view of the agency's concern about the potential reduction in benefits as a result of such installations, NHTSA sought comments on the types of additions made to completed pickup trucks that could interfere with the center lamp; whether those additions are typically made to new or used vehicles; whether those additions are typically made by vehicle dealers, cap dealers, repair businesses, vehicle owners, etc.; and the estimated percentage of pickup trucks that are likely to be equipped with caps at some point during their lifetime.

Finally, the agency asked that manufacturers, in commenting on the location aspects of the proposal, keep in mind the apparent reasons for the center lamp's effectiveness in reducing rear end collisions for passenger cars: it provides an unambiguous stop signal; it is in the line of sight of following drivers; and it creates a triangular effect, or cue, to the eye because it has been higher than the stop lamps mounted on each side of the vehicle (though there is no specific requirement that it be). NHTSA noted that the configuration on vehicles other than passenger cars may differ in some respects. For example, the stop lamps may be mounted higher than on passenger cars, and in some instances in the same horizontal plane as a prospective center lamp, thus creating a linear rather than triangular effect.

Grumman Olson and others commented that the upper limit of 84 inches was an impractical limitation for installing CHMSL's on vehicles that have walk-in bodies with hinged, split, or roll-up rear doors. Grumman Olson requested exempting such vehicles, or barring that, extending the height limitation and modifying the photometric specifications, as appropriate. The agency agrees that an 84 inch mounting height is impractical for some vehicles and, therefore, is not specifying a maximum mounting height in the final rule. However, it is not excluding any categories of light trucks from the CHMSL requirement.

The NPRM requested comment on whether higher mounting heights necessitated additional photometric requirements beyond the current 5 degree down specification for passenger cars. General Motors commented it did not believe an additional down-angle photometric specification was needed: however, if one were prescribed, it recommended that it apply only to CHMSL's installed above 66 inches. Chrysler, Isuzu, Hella and Volkswagen recommended a 5 degree down angle as the maximum requirement. Ford recommended a 10 degree down angle for lamps mounted at 84 inches, and TSEI and Grote recommended adding a 10 degree down requirement for all light truck CHMSL's. Volkswagen argued that a 5 degree down specification was adequate for an 84 inch mounting height, given the observation angles of following drivers for typical following distances and driver eye heights. In response to these comments, NHTSA, is specifying only a 5 degree down angle for light truck CHMSL's, irrespective of mounting heights, the same requirement as for passenger cars. No convincing argument has been made that a 10-degree down photometric specification will enhance safety over a 5-degree down one at mounting heights above 84 inches for the relatively small number of vehicles on which such high mountings might occur. Further, adoption of the 5-degree requirement for all light trucks will mean that vehicle manufacturers may use a single lamp design of all their production.

Mazda requested that the minimum mounting height be set below the proposed 34 inches, saying that such a height would be design restrictive. Alternatively, it recommended that the CHMSL locational requirements be related to the rear window as it is for passenger cars, but with an exception for pickups specifying that no portion of the lens shall be lower than 10 inches below the top of the tailgate. These recommendations were made to accommodate CHMSL installation by Mazda on its mini-pickup for which it concluded that the best location for a CHMSL would be in the lower part of the tailgate, 31 inches above the ground. This location was selected to prevent the lamp from being obscured by cargo and caps that might be added, and to position the CHMSL below the tailgate latch lever mechanism.

In addition, for those vehicles without a rear window, Mazda recommended language permitting a CHMSL to be mounted at the same height as the required stop lamps. However, if this suggestion were adopted, the lamps could be as low as 15 inches, the minimum mounting height for conventional outboard stop lamps. The agency is not adopting this recommendation since it would permit CHMSL's to be so low as to be ineffective for safety purposes, and

substantially below CHMSL's already in the passenger car fleet. For the final rule, the required minimum mounting height remains at 34 inches.

Volkswagen and General Motors proposed allowing the CHMSL to be located within 6 inches of the centerline of the vehicle and allowing the CHMSL to be divided so as to be positioned on both sides of split rear doors. The commenters said that this would provide for an aesthetically acceptable mounting location when a vehicle's split rear doors extended to the top of the vehicle. Chrysler and Suzuki mentioned that their on/off road multipurpose passenger vehicles (MPV's) are designed for high ground clearance and have minimal interior storage space for the spare tire. The tire is, therefore, mounted on the tailgate and covers the center of the sheet metal there. These companies stated that an offset CHMSL mounting would facilitate CHMSL installation on these and similar vehicles.

One of the most fundamental aspects of the CHMSL has been its center location. The value of any signal lamp depends significantly on its ability to provide unambiguous information about the intent or action of the driver to other drivers, in this case, that the driver is applying the brakes. All CHMSL's are presently mounted on the vehicle's centerline, and changing the lamp's center location may reduce its benefit to following drivers. Therefore, the agency is requiring light truck CHMSL's to be mounted on the vehicle centerline. However, to facilitate mounting on vehicles with split rear doors, the agency is permitting two identical CHMSL's of a minimum luminous effective lens area of 2¼ inches each to be mounted at the same height and adjacent to each other where the doors close. When photometered together they are required to meet the minimum photometrics of Figure 10, and when viewed together, to provide signal visibility through a continuous angle from 45 degrees to the right to 45 degrees to the left. However, this configuration will be allowed only if there is no room on the body structure above the doors to install a single lamp. In addition, CHMSL's can still be installed on vehicles with some centerline obstruction in other locations such as the roof, tailgate, roll bar, soft top frame, or, as Suzuki proposes for the Sidekick, on a pedestal located on the tailgate behind the spare tire.

Twenty-one individuals suggested that an alternative location for the CHMSL be the widest part of the vehicle, most recommending near the side view mirrors. Commenters suggested this alternative location for the CHMSL on light trucks because they felt the research results were not conclusive and that this location would be a good alternative to that which was proposed. However, as the agency has stated in the past year in corresponding with various proponents of this type of proposal, there was no evidence showing any improvement in safety from this concept. Further, given the resulting close proximity of the CHMSL's and mirrors, the effectiveness of the mirrors could be significantly diminished, should glare from the lamps shine into the driver's eyes. Therefore, the agency is not adopting this mounting location.

Finally, there was no consensus among the commenters regarding triangulation, i.e., whether the effectiveness of the center lamp on passenger cars is due, in part, to the fact that it is mounted higher than the standard stop lamps.

Practicability and Utility of a CHMSL on Some Vehicle Types

The NPRM requested comments on whether certain vehicle types or configurations presented problems with respect to the installation and operation of CHMSL's. Chrysler, Ford, and Isuzu argued that pickup trucks have no practicable location for CHMSL's. It was stated that if a CHMSL were placed on the cab, cargo could block its view from following drivers and cargo shifts could subject it to damage. Further, if the CHMSL were placed on the tailgate, it would be subject to damage and obscuration if the gate were lowered. The agency recognizes that CHMSL's might not be seen by following drivers in such situations, but it believes that these situations will occur relatively infrequently and that pickup trucks will be driven the great majority of the time without obscuration of CHMSL's mounted on the cab or tailgate. The safety benefits to be realized when the CHMSL's are visible easily justify requiring them.

The Recreational Vehicle Industry Association, National Automobile Dealers Association, and Chrysler expressed concern that CHMSL's mounted on pickup trucks would be obscured by aftermarket slide-in campers or caps (depending on the location of the CHMSL). Under the Vehicle Safety Act, manufacturers, dealers, distributors, or motor vehicles repair businesses may not install campers or other equipment on new or used vehicles that would obscure the original mandated CHMSL without providing an auxiliary CHMSL, as this obscuration would be "rendering inoperative" a mandated safety device. However, this prohibition does not apply to vehicle owners. Therefore, they could use slide-in campers or caps that obscure the original CHMSL. However, the agency believes that slide-in campers, which are not part of the original pickup design and hence are accessory equipment, are typically intended for occasional use, and the CHMSL would only be obscured for a relatively short period of time on those vehicles whose owners have purchased them. More importantly, if owners of these vehicles perceived the additional safety protection offered by CHMSL's, they might demand that manufacturers of campers equip them with CHMSL's. The marketplace, together with the render inoperative prohibition, should induce manufacturers of campers to equip them with CHMSL's.

In accordance with the existing provisions of 49 CFR parts 567 and 568, those who alter vehicles completed by others, and final-stage manufacturers of multi-stage vehicles, must assure that the CHMSL requirement is met. The National Truck Equipment Association and some final-stage vehicle manufacturers (Kois Brothers Equipment Company, Meyer Products, and Tailgater, Inc.) argued that there was no practical location for CHMSL's on many of the types of equipment and body types added by final-stage manufacturers to pickups and incomplete vehicles. These commenters provided examples and illustrations of such vehicles including dump bodies, hydraulic liftgates, utility body toppers, salt spreaders, stake trucks, and wreckers, among others. They stated that special wiring and locational considerations would make CHMSL's on many of the vehicles they produce substantially more costly than that estimated by the agency. Further, not only would CHMSL's be very difficult to install, the wiring and lamps would be subjected to abuse in heavy work and recreational situations; consequently, durability and maintenance would be a problem.

Despite their comments, data sheets provided by Kois, Meyer, and the NTEA show that installation of CHMSLs would not be as difficult as they believe. For example, the literature related to stake bodies (*i.e.*, platform bodies with removable vertical side and rear panels) indicated that they are equipped with clearance and identification lamps on the rear frame of the platform. CHMSLs could be used in place of the center-located identification lamps, since these vehicles, less than 80 inches wide, are

not required by Standard No. 108 to carry identification lamps.

It was also stated that the salt spreader would not be capable of having a CHMSL, because of difficulty in providing electrical power to the lamp through the spreader structure. However, one of the models comes complete with a cab-mounted electrical control panel. Certainly, the spreader could have a CHMSL with wiring and power provided by this in-cab panel. Based on the data sheets provided by Kois, Meyer, and the NTEA data sheets for many different bodies and equipment, it appears that many other multi-stage vehicles have similar convenient means of providing the necessary electrical hook-up. The agency is presenting below possible CHMSL locations for each of the rear end configurations provided by Kois, Meyer, and/or the NTEA in their comments:

- LIFT GATES: The rear face of the cab, top of the cab or (with more difficulty) on a protected or recessed portion of the lift gate.
- SERVICE BODIES: The rear face of the cab, top of the cab, the tail gate, or on an overhead ladder or pipe rack, if so equipped.
- COVERED UTILITY BODY: The tailgate, the rear gate, the rear face of the body compartment, or on the top of the body compartment.
- SPREADERS: Depending upon the spreader dimensions, the CHMSL could be located on the rear face of the cab, the top of the cab, or the spreader frame. In addition, as suggested by Suzuki for open-bodied vehicles, CHMSL could be mounted on a bracket which positions the CHMSL at the proper height on the vehicle centerline.
- TIPPERS—DUMP BODIES: The rear gate, the rear face of the tipper's forward bulkhead, the rear edge of the cab shield, or below the rear gate on the rear face of the dump body.
- STAKE BODIES: The rear face of the platform, where Kois presently positions identification lamps which are not required.
- "PANEL BODIES" WITH SLIDING OR HINGED DOORS: For each of the eight configurations presented by Kois and NTEA, the CHMSL could be substituted for the existing identification lamps that are not required by Standard No. 108.
- BUCKET—CHERRY PICKER TRUCKS: The CHMSL could be located on the rear tailgate (if so equipped), or on the bucket itself.

With some of the different types of light trucks and vans, it may be more difficult for the manufacturer to comply with this regulation. However, NHTSA believes that the perceived installation difficulties are surmountable. The agency believes that the final-stage manufacturers can conquer the apparent difficulties. For example, as mentioned above, Kois already provides stake trucks with identification lamps which could easily be replaced by a CHMSL.

There are also practicable CHMSL mounting locations on open-bodied, sport-utility vehicles, as discussed above (e.g., Jeep Wrangler, Geo Tracker, Suzuki Sidekick). These open-bodied vehicles have roll bars, tailgates, and top superstructures available for CHMSL mounting. These solutions may be somewhat more complex and costly than for vanbodied vehicles, but they are still practicable.

Other Performance Requirements

Other requirements are similar to those specified for passenger car CHMSL's. The lamp lens area must be a minimum of 4½ square inches and, if mounted inside the rear glazing, means must be provided to minimize reflections from the light of the lamp upon the rear window glazing that might be visible to the driver when viewed directly or indirectly in the rearview mirror. As discussed above, the photometric requirements are those specified for passenger cars in Figure 10 of Standard No. 108.

Combining the Center Lamp With Other Vehicle Equipment

Chrysler, Ford, and General Motors requested the CHMSL be permitted to be combined with the cargo-bed lamp typically found on the rear of the cab of pickup trucks. They reasoned that despite the specific prohibition in S5.4 against the combining of a CHMSL with any other lamp, the combination of CHMSL with a cargo lamp would have absolutely no negative safety effect because of the nature and use of the two lamps. However, because the notice of proposed rulemaking did not propose a variance from the general prohibition, NHTSA cannot at this time adopt a final rule based upon the comments requesting it. Accordingly, it is publishing a supplemental notice of proposed rulemaking elsewhere in this issue of the **Federal Register** to permit the physical combination of cargo-bed lamps with light truck CHMSL's.

Effective Dates

In proposing an effective date for vehicles other than passenger cars, the agency followed the example it set in the passenger car rulemaking. There, the agency adopted a mandatory effective date that was approximately 2½ years after the issuance of the final rule, allowing two full model years for manufacturers to achieve compliance. NHTSA has determined that installation of the lamp on some designs of multipurpose passenger vehicles and buses is no less complex than installation on cars, and that mandatory compliance should not be required for the next model years (1992 and 1993). Accordingly, it is hereby found that good cause is shown for an effective date of the final rule later than one year after its issuance. The effective date of the final rule is September 1, 1993.

NHTSA allowed passenger car manufacturers optional use of the center lamp in the year preceding the mandatory effective date. The agency has decided to allow manufacturers of vehicles other than passenger cars to install the center lamp in the year preceding the mandatory effective date, provided that the lamp meets all requirements. Because this step may affect manufacturers who are presently installing the center lamp on vehicles other than passenger cars, and whose designs may not meet the requirements of the final rule, it is hereby found that good cause is shown for an effective date later than one year after issuance of the final rule. The effective date for optional compliance is September 1, 1992.

Manufacturers presently installing conforming center lamps on vehicles other than passenger cars, or who wish to do so before September 1, 1992, are subject only to the general prohibition of paragraph S5.1.3 that no additional lighting equipment may be installed that impairs the effectiveness of lighting equipment required by Standard No. 108.

Costs

The cost of installing a CHMSL on a light truck depends on the type of lamp assembly selected by the manufacturer, the nature of any necessary modifications to the vehicle's electrical system, and the nature of any other vehicle modifications that might be necessary to provide a suitable location for the lamp to be mounted. Manufacturer and dealer markup and taxes must be added to calculate the consumer purchase price increase due to the addition of CHMSL's. In the agency's evaluation of passenger car CHMSL performance, the 1987 sales-weighted price increase attributable to a CHMSL was estimated to be $9.05. Increasing this value to account for inflation in 1988 and 1989 produces an estimated consumer price increase for a passenger car CHMSL of about $9.50.

In addition to the cost of installing the CHMSL, a lifetime fuel penalty due to the slight increase in vehicle weight must be accounted for. Historically, the agency has assumed that each incremental pound of light truck weight would increase lifetime fuel consumption costs by $1.14. It is impossible to make a reliable prediction at this time when oil prices are fluctuating widely on a daily basis, but given the almost indiscernible impact of the lamp on lifetime fuel consumption, the agency does not believe that the lifetime fuel consumption costs would exceed $1.30. NHTSA's studies estimate the average weight of passenger car CHMSL's to be 0.95 pound. Assuming a similar weight for light truck CHMSL's, the estimated increase in the lifetime fuel consumption costs for a light truck CHMSL would be about $1.25. Finally, about $0.50 (present value) must be added to the cost of operating a CHMSL for bulb replacement purposes. Thus, the lifetime consumer cost per truck CHMSL in 1989 dollars is estimated to be $11.25.

This is believed to be a reasonable estimate in those cases where the CHMSL installation on light trucks is a fairly simple procedure, similar to that for passenger cars. This would appear to be the case for most light trucks. However, the cost of a CHMSL on many of the more complex vehicle configurations in use (those produced by multi-stage manufacturers) will probably be higher. The agency estimated that the cost of the more complex configurations would average 50% higher and requested comments on the specific types of trucks (e.g., wrecker, stake, dump, tall vans with split or roll-up doors), on which mounting a CHMSL would be more difficult and the associated additional expense. The sales volumes of these vehicles were also requested so that the agency could adjust its cost estimates, as appropriate.

Three commenters disagreed with the agency's cost estimate for CHMSL's on multi-stage vehicles. Gem Top, which manufactures truck tops for commercial fleet users, said that some of its customers ordered "a collision avoidance light" (third stop lamp), centered above the rear door. The company said $40 was a far more realistic price for this lamp. Kois Brothers Equipment Company, a truck equipment supplier, said the average price for installation in its shop would be $57.50. The third commenter, NTEA, provided illustrations of multi-stage vehicles for which CHMSL installation would be more difficult, and stated that modifications by cap manufacturers on some vehicles where an original CHMSL was obscured by a cap would cost $50–$200. These commenters, however, did not provide any detailed information explaining their cost figures, e.g., information identifying the portion attributable to additional wiring, body modification, or more costly CHMSL design. Therefore, the agency has no basis for judging the merit of these figures.

At the same time, the agency agrees that installing CHMSL's on some vehicle types that are produced by final-stage manufacturers will be more difficult and costly. However, as these manufacturers gain more experience in installing CHMSL's, in selecting the optimal designs and mounting locations determined for the various types of vehicle bodies and equipment, and as the lamps are produced and installed in quantity, prices should drop markedly. Further, the agency notes that many multi-stage vehicles, including many vans, utility caps, and a variety of other pickup-based bodies, have readily accessible mounting locations, such as on the cab, above or on split van doors, and on tailgates. The agency concludes that an estimated average consumer cost of installing CHMSL's on multi-stage manufactured vehicles would be 50 percent higher than for other light trucks, or $17.00, is reasonable. The agency emphasizes that this is an average cost, and that some CHMSL installations will cost more; others will cost about the same as those installed by the single-stage manufacturers. Indeed, the originally installed CHMSL may be effective on many multi-stage vehicles.

Impact Analyses

NHTSA has considered the impacts of this rulemaking action and has determined that it is major within the meaning of Executive Order 12291 "Federal Regulation," and significant under Department of Transportation regulatory policies and procedures. The agency has estimated that a center highmounted stop lamp would add about $11.25 to the lifetime cost of owning and operating a vehicle that is presently not so equipped. The annual cost of implementing this requirement is estimated to be $58 million. When all vehicles covered by the rule are equipped with the lamp, NHTSA estimates there will be an annual rear-end accident reduction in the range of 65,000 to 90,000 crashes, and a corresponding reduction in injuries of 19,200 to 27,400. In addition, property damage costs could be reduced by $103 to $143 million annually. The agency has prepared a Final Regulatory Impact Analysis and placed it in the docket. In the Analysis, NHTSA has adjusted the benefits to account for the fact that, by 1992, head restraints will be required on light trucks, thereby reducing the injuries that would occur in the absence of CHMSL's.

NHTSA has analyzed this rule for purposes of the National Environmental Policy Act. The rule will not have a significant effect upon the environment as the increase in materials required by the manufacture of the lamp is not deemed significant.

The agency has also considered the effects of this rule in relation to the Regulatory Flexibility Act. I certify that this rule will not have a significant economic effect upon a substantial number of small entities. Lamp and vehicle manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Further, small organizations and governmental jurisdictions will not be significantly affected as the price of new vehicles should not be more than minimally impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 "Federalism." It has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. S5.1.1.27 is revised to read:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S5.1.1.27 (a) Except as provided in paragraph (b) of this section, each passenger car manufactured on or after September 1, 1985, and each

multipurpose passenger vehicle, truck, and bus, whose overall width is less than 80 inches, whose GVWR is 10,000 pounds or less, manufactured on or after September 1, 1993, shall be equipped with a high-mounted stop lamp which:

(1) Shall have an effective projected luminous area not less than 4½ square inches.

(2) Shall have a signal visible to the rear through a horizontal angle from 45 degrees to the left to 45 degrees to the right of the longitudinal axis of the vehicle.

(3) Shall have the minimum photometric values in the amount and location listed in Figure 10.

(4) Need not meet the requirements of paragraphs 3.1.6 Moisture Test, 3.1.7 Dust Test, and 3.1.8 Corrosion Test of SAE Recommended Practice J186a, Supplemental High-Mounted Stop and Rear Turn Signal Lamps, September 1977, if it is mounted inside the vehicle.

(5) Shall provide access for convenient replacement of the bulb without the use of special tools.

(b) Each multipurpose passenger vehicle, truck and bus whose overall width is less than 80 inches, whose GVWR is 10,000 pounds or less, whose vertical centerline, when the vehicle is viewed from the rear, is not located on a fixed body panel but separates one or two movable body sections, such as doors, which lacks sufficient space to install a single high-mounted stop lamp on the centerline above such body sections, and which is manufactured on or after September 1, 1993, shall have two high-mounted stop lamps which:

(1) Are identical in size and shape and have an effective projected luminous area not less than 2¼ inches each.

(2) Together have a signal to the rear visible as specified in paragraph (a)(2) of this S5.1.1.27.

(3) Together have the minimum photometric values specified in paragraph (a)(3) of this S5.1.1.27.

(4) Shall provide access for convenient replacement of the bulbs without special tools.

* * * * *

3. S5.1.1.30 and S5.1.1.31, as they were added effective December 1, 1991 (55 FR 20161, May 15, 1990; 55 FR 50184, Dec. 5, 1990), are redesignated as S5.1.1.31 and S5.1.1.32, respectively.

4. S5.1.1.28 and S5.1.1.29 are redesignated as S5.1.1.29 and S5.1.1.30, respectively.

5. New S5.1.1.28 is added and S5.3.1.8 is revised to read as follows:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S5.1.1.28 A multipurpose passenger vehicle, truck, or bus, whose overall width is less than 80 inches, and whose GVWR is 10,000 pounds or less, that is manufactured between September 1, 1992 and September 1, 1993, may be equipped with a high-mounted stop lamp or, in the case of vehicles subject to S5.1.1.27(b), two high-mounted stop lamps, that conform to S5.1.1.27 and S5.3.1.8.

* * * * *

S5.3.1.8 (a) Each high-mount stop lamp installed in or on a vehicle subject to S5.1.1.27(a) shall be located as follows:

(1) With its center at any place on the vertical centerline of the vehicle, including the glazing, as the vehicle is viewed from the rear.

(2) If the lamp is mounted below the rear window, no portion of the lens shall be lower than 6 inches below the rear window on convertibles, or 3 inches on other passenger cars.

(3) If the lamp is mounted inside the vehicle, means shall be provided to minimize reflections from the light of the lamp upon the rear window glazing that might be visible to the driver when viewed directly, or indirectly in the rearview mirror.

(b) The high-mounted stop lamps installed in or on a vehicle subject to S5.1.1.27(b) shall be located at the same height, with one vertical edge of each lamp on the vertical edge of the body section nearest the vertical centerline.

* * * * *

§ 571.108 [Amended]

6. In the second column of Table III to § 571.108, for the entry "High-mounted stoplamp", the text "1 red, for passenger cars only" is revised to read "1 red".

7. In the second column of Table IV to § 571.108, for the entry "High-mounted stoplamp", the text "On the rear, on the vertical centerline [See S4.3.1.8], effective September 1, 1985, for passenger cars only" is revised to read "On the rear, on the vertical centerline [See S5.1.1.27, S5.3.1.8, and Table III]".

8. In the fourth column of Table IV to § 571.108, for the entry "High-mounted stoplamp", the text "[See S5.3.1.8]" is revised to read "See S5.3.1.8 for passenger cars. Not less than 34 inches for multipurpose passenger vehicles, trucks, and buses".

Issued on: April 11, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91-9220 Filed 4-16-91; 3:05 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB42

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the plant Schoepfia arenaria

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Schoepfia arenaria* (no common name), a small evergreen tree, to be a threatened species pursuant to the Endangered Species Act (Act) of 1973, as amended. Historically, *Schoepfia arenaria* was known from the coastal forests of northern Puerto Rico. Deforestation for industrial and urban development has extirpated the species from most of these areas. This endemic plant is currently threatened by proposed development projects in Isabela and by land invasion for house construction in Piñones. This final rule will implement the Federal protection and recovery provisions afforded by the Act for *Schoepfia arenaria*.

EFFECTIVE DATE: May 20, 1991.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622, and at the Service's Southeast Regional Office, suite 1282, 75 Spring Street SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Marelisa T. Rivera at the Caribbean Field Office address (809/851-7297) or Mr. Dave Flemming at the Atlanta Regional Office address (404/331-3583 or FTS 841-3583).

SUPPLEMENTARY INFORMATION:

Background

Schoepfia arenaria was first collected in Puerto Rico by Amos Arthur Heller in 1899 from sandy coastal thickets at San José Lagoon, Santurce (Little et al. 1974), but it was described by Britton (Urban 1907). San José Lagoon was the source of specimens collected by Holdridge in 1939 and by L.E. Gregory in 1939. However, urban and industrial expansion has resulted in the elimination of this population. Today it is known from Isabela, Piñones, Fajardo and the Río Abajo Commonwealth Forest. The species may also exist in the

Tortuguero Lagoon Natural Reserve (Vicente Quevedo, Department of Natural Resources, *in litt.* 1990).

Schoepfia arenaria is an evergreen shrub or small tree up to 20 feet (6 m) tall and with several trunks from the base reaching 4 inches (10 cm) in diameter. The leaves are simple, alternate, without stipules, with petioles ⅛ inch (4 mm) long; the upper surface is green and slightly shiny, and the lower surface is light green. *Schoepfia arenaria* has been observed with flowers mainly in spring and fall, and with fruits in summer and winter. Usually two or three light yellow tubular-shaped flowers are borne on the end of the stalk in the leaf bases. The fruit is elliptic, one-seeded, shiny red, and ½ inch (12 mm) in diameter. The wood is light brown and hard.

Schoepfia arenaria is found in low elevation evergreen and semi-evergreen forests (subtropical moist forest life zone) of the limestone hills of northern Puerto Rico. In the Isabela area approximately 100 individuals are known from the wooded upper slopes of the hills to the west of the mouth of the Guajataca Gorge. Individuals of all size classes have been reported. Hills in this area were destroyed for the construction of Highway 2 and the area is under intense development pressure for both rural and urban development. The construction of a resort development, including 7 hotels, 5 golf courses, 36 tennis courts and 1,300 housing units, threatens the area.

In the area near the Piñones Commonwealth Forest about 30 mature plants and numerous saplings and seedlings of *Schoepfia arenaria* are known from Punta Maldonado. The land invasion for house construction, the encroachment of the illegal dumping of trash and the introduction of domestic animals threatens the area. In the same general vicinity, this species was also known from Punta Vacía Talega, but was last seen by Woodbury in 1981 (Department of Natural Resources 1990).

This species is also found in limestone hills at El Convento, Fajardo (property owned by the Commonwealth of Puerto Rico for the governor's beach house). In this area approximately 50 individuals were estimated. Recent searches indicated that 10 to 12 individuals are present on one limestone hill in this property. In the Río Abajo Commonwealth Forest one individual was found in 1985 at "cuesta de los perros" (C. Laboy, pers. comm.).

Schoepfia arenaria was recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps 1978). The species was included among the plants being considered as endangered or threatened species by the Service, as published in the **Federal Register** (45 FR 82480) dated December 15, 1980; the November 28, 1983, update (48 FR 53680) of the 1980 notice; and revised notices of September 27, 1985 (50 FR 39526) and February 21, 1990 (55 FR 6184). The species was designated category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in each of the four notices.

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of section 4(b)(3)(A) of the Act, as amended in 1982. The Service subsequently made petition findings in each October from 1983 through 1989 that listing *Schoepfia arenaria* was warranted but precluded by other pending listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. A proposed rule to list *Schoepfia arenaria*, published September 17, 1990 (55 FR 38102), constituted the final 1-year finding in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Comments and Recommendations

In the September 17, 1990, proposed rule and associated notifications, all interested parties were requested to submit factual reports of information that might contribute to the development of a final rule. Appropriate agencies of the Commonwealth of Puerto Rico, Federal agencies, scientific organizations, and other interested parties were requested to comment. A newspaper notice inviting general public comment was published in *El Dia* on October 2, 1990, and in the San Juan Star on September 30, 1990. Three letters of comment were received and are discussed below. A public hearing was neither requested nor held.

The Puerto Rico Department of Natural Resources, Natural Heritage Division, supported the listing of *Schoepfia arenaria* as a threatened species. The Department also pointed out that a reported occurrence of the species in the Tortuguero Lagoon Natural Reserve was missing from the Service's data, and that contrary to the proposed rule, the two sites indicated as being in the Piñones Commonwealth Forest are actually on private lands. This information has been incorporated into the final rule.

Dr. José L. Vivaldi from the National Park Service provided comments, but he did not indicate either support or objection to listing the species.

Costa Isabela Partners commented and supported the listing of the species. They mentioned that all of the identified *Schoepfia arenaria* trees on their property are located on cliffs that are to be donated to the Puerto Rico Department of Natural Resources in order to ensure their protection and preservation.

Summary of Factors Affecting the Species

After the thorough review and consideration of all information available, the Service has determined that *Schoepfia arenaria* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Schoepfia arenaria* Urban & Britton are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range.

Destruction and modification of habitat have been, and continue to be, significant factors reducing the numbers of *Schoepfia arenaria*. Deforestation for construction, including urban, industrial and tourist development, the leveling of limestone hills for construction material, random cutting and yam harvesting have all contributed to the species' decline.

B. Overutilization For Commercial, Recreational, Scientific, or Educational Purposes

Taking for these purposes has not been a documented factor in the decline of this species. However, its ornamental potential could result in future taking.

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of this species.

D. The Inadequacy of Existing Regulatory Mechanisms

The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Schoepfia arenaria* is not yet on the Commonwealth list. Federal listing would provide immediate protection

and, if the species is ultimately placed on the Commonwealth list, enhance its protection and possibilities for funding needed research.

E. Other Natural or Manmade Factors Affecting its Continued Existence

One of the most important factors affecting the continued survival of *Schoepfia arenaria* is its limited distribution.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Schoepfia arenaria* as threatened. The species is restricted to only a few sites in coastal thickets and limestones hills of northern Puerto Rico, most of which are subject to habitat destruction and modification by development projects. However, because plants of all sizes and ages have been observed, it appears that the species is not in imminent danger of becoming extinct. Threatened status, therefore, seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for *Schoepfia arenaria* are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The number of individuals of *Schoepfia arenaria* is sufficiently small that vandalism could seriously affect the survival of the species. Publication of critical habitat descriptions and maps would only tend to make the species more vulnerable. The Service believes that Federal involvement in the areas where this plant occurs can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting this species' habitat. Protection of this species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being designated for *Schoepfia arenaria*, as discussed above. Federal involvement is not anticipated where the species is known to occur.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any Commonwealth law or regulation, including Commonwealth criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulations. This protection may apply to threatened plants once revised regulations are promulgated. Certain exceptions apply to agents of the Service and Commonwealth conservation agencies.

The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. However, it is anticipated that few trade permits for *Schoepfia arenaria* will ever be sought or issued, since the species is not known to be in cultivation and is uncommon in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Ayensu, E.S., and R. A. Defilipps. 1978. Endangered and threatened plants of the United States. Smithsonian Institution and World Wildlife Fund, Washington, DC xv + 403 pp.

Department of Natural Resources. 1990. Natural Heritage Program, San Juan, P.R.

Liogier, H.A. and L.F. Martorell. 1982. Flora of Puerto Rico and adjacent islands: a systematic synopsis. University of Puerto Rico, Río Piedras, Puerto Rico. 342 pp.

Little, E.L., R.O. Woodbury, and F.H. Wadsworth. 1974. Trees of Puerto Rico and the Virgin Islands. U.S. Department of Agriculture, Washington, DC 1024 pp.

Urban, I. 1907. Symb. Ant. 5:181.

Author

The primary author of this final rule is Ms. Marelisa Rivera, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and

recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order, under Olacaceae to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species			Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
*	*	*	*	*	*	*	
Olacaceae—Olax family:							
Schoepfia arenaria	None		U.S.A. (PR)	T	420	NA	NA
*	*	*	*	*	*	*	

Dated: April 2, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–9193 Filed 4–18–91; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 901184–1042]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure to directed fishing in the Gulf of Alaska; request for comments.

SUMMARY: The Regional Director, Alaska Region, NMFS, (Director), is establishing a directed fishing allowance and prohibiting directed fishing for the shortraker-rougheye rockfish species group in the Central Regulatory Area of the Gulf of Alaska. This action is necessary to prevent the total allowable catch (TAC) for shortraker-rougheye rockfish in the Central Regulatory Area of the Gulf of Alaska from being exceeded before the end of the fishing year. The intent of this action is to promote optimum use of groundfish while conserving shortraker-rougheye rockfish stocks.

DATES: Effective 12 noon on April 15, 1991, Alaska local time (A.l.t.), for the remainder of the fishing year. Comments are invited for 15 days following the effective date of this notice.

ADDRESSES: Comments should be mailed to Dale R. Evans, Chief, Fisheries Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1668, or be delivered to 9109 Mendenhall Mall Road, Federal Building Annex, suite 6, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. The FMP was prepared by the North Pacific Fishery Management Council and is implemented by regulations appearing at 50 CFR 611.92 and parts 620 and 672.

In accordance with § 672.20(c)(2), if the Director determines that the amount of a target species category apportioned to a fishery is likely to be reached, the Director may establish a directed fishing allowance for that species or species group. In establishing a directed fishing allowance, the Director shall consider the amount of that target species or species group that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Director establishes a directed fishing allowance and that allowance is or will be reached, he will prohibit directed fishing for that species or species group in the specified regulatory area or district.

The amount of a species or species group apportioned to a fishery is TAC, as defined in § 672.20(c)(1). The 1991 TAC for shortraker-rougheye rockfish species group in the Central Regulatory Area of the Gulf of Alaska is 1,320 mt (56 FR 8723; March 1, 1991). The Director has determined that 816 mt of the shortraker-rougheye rockfish species group is necessary as bycatch to support anticipated groundfish fisheries. The Director is establishing a directed fishing allowance of 504 mt for shortraker-rougheye rockfish in the Central Regulatory Area. He has determined that the allowance will be reached on April 15, 1991, and is prohibiting directed fishing for shortraker-rougheye rockfish in that area, effective 12 noon, A.l.t., April 15, 1991.

After 12 noon, A.l.t., April 15, 1991, in accordance with § 672.20(g)(3), amounts of shortraker-rougheye rockfish retained on board vessels in the Central Regulatory Area at any time during a trip must be less than 20 percent of the amount of all other fish species retained by the vessel at any time during the same trip as measured in rough weight equivalents. This closure will remain in effect for the remainder of the fishing year.

Classification

This action is taken under 50 CFR 672.20 and is in compliance with Executive Order 12291.

Immediate effectiveness of this notice is necessary to prevent wastage of groundfish that will occur if TACs are exceeded and retention of shortraker-rougheye rockfish is prohibited. Therefore, the Assistant Administrator for Fisheries, NOAA, finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment on this notice or to delay its effective date. However, interested persons are invited to submit comments in writing to the address above for 15 days after the effective date of this notice.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 15, 1991.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-9188 Filed 4-15-91; 4:51 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 56, No. 76
Friday, April 19, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1240

[AMS-FV-91-241]

Honey Research, Promotion, and Consumer Information Order; Proposed Amendments to the Order, Rules and Regulations Issued Thereunder, and Procedure for the Conduct of Referenda

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This action gives notice of proposed amendments to the Honey Research, Promotion, and Consumer Information Order (Order); Rules and Regulations issued thereunder; and Procedure for the Conduct of Referenda in Connection With the Honey Research, Promotion and Consumer Information Order. The Honey Research, Promotion, and Consumer Information Act (Act) was amended by The Food, Agriculture, Conservation, and Trade Act of 1990. In accordance with this amendment to the Act, amendments to the Order are proposed herein. In addition, conforming amendments are proposed to be made to the Order, all applicable rules and regulations issued thereunder, and to the procedure for the conduct of referenda.

DATES: Comments must be received by May 20, 1991.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours. Comments concerning the information collection requirements contained in this action should also be sent to the Office of Information and Regulatory Affairs; Office of Management and Budget, Washington, DC 20502. Attention Desk Officer for Agriculture Marketing Service, USDA.

FOR FURTHER INFORMATION CONTACT: Shelia A. Young, Marketing Order Administration Branch, F&V, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 475–3930.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under the Honey Research, Promotion, and Consumer Information Order (7 CFR part 1240), as amended, hereinafter referred to as the Order. The Order is effective under the Honey Research, Promotion, and Consumer Information Act, as amended (7 U.S.C. 4601–4612) hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Executive Order 12291 and U.S. Department of Agriculture (USDA) Regulation 1512–1 and has been determined to be a "non-major" rule under the criteria contained in the Executive Order.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Servicing (AMS) has considered the economic impact of this proposed action on small entities.

There are an estimated 145 handlers, 510 producers-packers, 8,300 producers, and 350 importers who are currently subject to the provisions of the Order. The majority of these persons would be classified as small businesses under the criteria established by the Small Business Administration.

The changes proposed to the Order, rules and regulations, and procedures for conduct of referenda are as a result of amendments to the Act. The economic impact of these proposed changes which are described in the preamble is not expected to be significant. The proposed changes would also impose additional reporting and recordkeeping requirements. The economic impact of these requirements also is not expected to be significant. Furthermore, the research and promption program is expected to benefit handlers, producer-packers, producers, and importers by expanding and maintaining new and existing markets. Accordingly, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act (PRA) of 1980 and the Office of Management and Budget (OMB) regulations (5 CFR part 1320) (44 U.S.C. chapter 35) the information collection and recordkeeping requirements contained in this section will be submitted to OMB for approval. Existing information and collection requirements have been previously approved by OMB control No. 0581–0153. The Order as proposed to be amended herein would authorize the Board to require that any person who receives an exemption from assessments to submit reports to employees of the Board at such times and in such manner as the Board may prescribe. In addition, such persons would be required to maintain records as necessary to carry out the provisions of the Order and the records would be subject to inspection. Records would be required to be maintained for two years beyond the first period of their applicability. It is estimated that approximately 3,000 producers, producer-packers, and importers would be subject to these requirements. It is estimated that any such reports would provide for an average burden of .17 hours per report based upon existing reporting requirements. To claim an exemption, a producer, producer-packer, or importer shall submit an application to the Board stating the basis of which the persons claims the exemption each year. It is estimated that the burden would be one response per year with average reporting burden of .17 hours per response. In addition, exporters nominated for Board membership would complete a membership background information sheet. The estimated number of respondents to this form would be four nominees with an estimated average reporting burden of 0.5 hours per response. Information sheets have been previously approved by OMB and assigned OMB number 0505–011. Comments concerning the information collection requirements continued in this action should also be sent to the Office of Information and Regulatory Affiars, Office of Management and Budget, Washington, DC.

There are about 212,000 beekeepers in the United States, 95 percent of who are hobbyists with fewer than 25 colonies. Another 10,000 part-time beekeepers operate 25–299 colonies. Commercial beekeepers, those owning 300 or more colonies, are estimated to number about 2,000. Hobbyists and part-time beekeepers combined account for 99 percent of the beekeepers, 50 percent of the colonies, and 40 percent of honey production.

Honey production declined from an average of about 240 million pounds in the 1950's and 1960's to 211 million pounds in the 1970's. Excluding the weather-reduced crops of 1984 and 1985, honey production averaged 208 million pounds for the 1980–88 period. Also, honey production averaged 213 million pounds for the crop years, 1986–88. The United States has been a net importer of honey since 1967, except in 1973. Imports reached successive record levels in 1981–85. Exports have been increasing since 1985.

Domestic honey consumption includes commercial sales and Government donations. Honey consumption in the United States over the past four decades has ranged between 208 million pounds and 331 million pounds annually. Annual domestic consumption of honey increased from an average of 241 million pounds in the 1960's, 245 million pounds in the 1970's, and 266 million pounds for 1980–87.

This proposed rule invites comments on changes to the Order, the rules and regulations issued thereunder, and to the procedure for the conduct of referenda. The changes are proposed in accordance with amendments to the Honey Reseach, Promotion and Consumer Information Act (7 U.S.C. 4601–4612) as made the Honey Research, Promotion and Consumer Information Act Amendments of 1990 (subtitle F, chapter 1 of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, November 28, 1990).

The Act, as amended, provides for exporter representation on the National Honey Board (Board). There are two importer members and their respective alternates serving on the 13-member Board. The industry has in the past found it difficult to find enough importers to adequately represent that segment of the industry. The amendment to the Act provides that one of the two importer positions on the Board may be filled by an exporter of honey. This change is reflected in proposed amendments to the order.

The Act, as amended, provides that should the seven honey producer regions in the United States be realigned, any producer Board members appointed from a region, who through the realignment process then no longer reside in the region for which they were appointed, would be allowed to complete their terms of office on the Board. This change in the Act permits greater continuity in Board membership and minimizes disruption of the Board's activities should realignment be necessary. This change is reflected in amendments to the order

The Act, as amended, provides that producer-packers who purchase for resale more honey than they produce shall be ineligible for appointment as a producer or alternate producer member to the Board. This change assures industry of actual producer representation on the Board. This change is reflected in proposed amendments to the order

The Act, as amended, will allow producers and importers who produce or import a total quantity of less than 6,000 pounds of honey annually, to apply for and receive an exemption from paying assessments only if the total amount of such honey is consumed at home, donated, or distributed directly to retail outlets. Formerly, a producer or importer who produced or imported 6,000 pounds or less of honey per year could apply for and receive an exemption without any restriction as to the manner in which the honey was used. Further, the Act, as amended, would not permit any producer, producer-handler, or importer to vote in any referendum should they receive an exemption from paying assessments. Changes incorporating the use of honey in determining the eligibility for receiving an exemption from paying assessments are reflected in proposed amendments to the Order.

The Act, as amended, requires persons who obtain an exemption from the assessment requirement to maintain and make available for inspection books and records, and to file reports as may be required by the order to assure proper enforcement of the exemption provision. To claim an exemption, a producer, producer-packer, or importer is required to file a report with the Board stating the basis of the exemption. These changes are reflected in proposed amendments to the Order.

The Act, as amended, provides for patents, copyrights, inventions, product formulations, or publications developed with Board funds to be the property of the Board and any income derived therefrom to inure to the benefit of the Board. This amendment amends previous language whereby such funds became the property of the U.S. Government as represented by the Board. This change is reflected in a proposed amendment to the order.

The Act, as amended, provides that the Secretary shall provide proof of payment documents to producers at the time Board assessments are deducted on honey placed under the Honey Price Support Loan Program. In accordance with this provision, producers shall qualify for a refund once the deduction of the assessment has been made, even though final settlement has not been made at the time of the loan. This amendment is designed to enable a producer who received a price support loan to apply for a refund without delay. Under current Order provisions, refunds cannot be made until final settlement of the loan, even when portions of the honey under loan are redeemed. Delays sometimes occur for a number of months, often until the maturity date of the loan. These changes are reflected in proposed amendments to the Order.

The Act, as amended, provides that each importer requesting a refund will receive a refund limited to an amount that represents the same percentage of assessments collected from that importer as the percentage of refunds paid to domestic producers by the Board. For example, if the producer refund rate is 10 percent of all assessments collected from producers, each importer could only receive a refund equal to 10 percent of the assessments that the importer paid. Current provisions of the Order apply a percentage refund limitation on importers as a group but applies the producer refund percentage to the entire amount collected from all importers. This change, applying the producer refund rate to each individual importer's allowable refund, is reflected in the accompanying proposed rules and regulations.

The Act, as amended, provides that if a first handler or the Secretary fails to collect an assessment from a producer, the producer shall be responsible for the payment of assessments to the Honey Board. This change is reflected in the proposed rules and regulations issued hereunder.

In addition, the Act, as amended, authorizes the Secretary to conduct a forthcoming referendum to determine if honey producers and importers favor, (1) The continuation of the order and (2) termination of the authority for producers and importers to obtain a refund of assessments, based upon the vote of a majority of those producers and importers voting in the referendum and who produce and import more than 50 percent of the volume of honey produced an imported by those voting in the referendum and, in the event the refund provision is eliminated, the order

would be amended to reflect that decision.

All written comments received in response to this publication by the date specified herein will be considered prior to any finalization of the proposed amendments.

List of Subjects in 7 CFR Part 1240

Honey, Agricultural research, Reporting and recordkeeping requirements, Market Development, and Consumer information.

For the reasons set forth in the preamble, it is proposed that chapter XI of title 7, part 1240 be amended to read as follows:

PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION ORDER

1. The authority citation for 7 CFR part 1240 is revised to read as follows:

Authority: 7 U.S.C. 4601–4612.

2. Section 1240.10 is revised to read as follows:

§ 1240.10 Importer.

Importer means any person who imports honey or honey products into the United States as principal or as an agent, broker, or consignee for any person who produces honey outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such honey or honey products.

§§ 1240.11–1240.21 [Redesignated as §§ 1240.2–1240.22]

3. Sections 1240.11 through 1240.21 are redesignated as §§ 1240.12 through 1240.22 and a new § 1240.11 is added to read as follows:

§ 1240.11 Exporter.

Exporter means any person who exports honey or honey products from the United States.

4. Section 1240.30 is revised to read as follows:

§ 1240.30 Establishment and membership.

A Honey Board (hereinafter called called the "Board") is hereby established to administer the terms and provisions of this part. The Board shall consit of thirteen (13) members, each of whom shall have an alternate. Seven members and seven alternates shall be honey producers; two members and two alternates shall be honey handlers; two members and two alternates shall be honey either importers or exporters of which at least one member and alternate shall be an importer; one member and one alternate shall be an officer or employee of a honey marketing cooperative; and, one member and one alternate shall be selected to represent the general public. The Board shall be appointed by the Secretary from nominations submitted by the National Honey Nominations Committee, pursuant to § 1240.32.

5. Section 1240.32 is amended by revising paragraph (a)(1), redesignating paragraph (b)(7) as (b)(8), and adding new paragraph (b)(7) to read as follows:

§ 1240.32 Nominations.

* * * * *

(a) * * *

(1) There is hereby established a National Honey Nominations Committee, hereinafter called the "Committee", which shall consist of not more than one member from each State, appointed by the Secretary from nominations submitted by each State Association. Wherever there is more than one eligible association within a State, the Secretary shall designate the association most representative of the honey producers, handlers, importers and exporters not exempt under § 1240.42 (a) and (b) to make nominations for that State.

* * * * *

(b) * * *

(7) In nominating producer members to the Board, no producer-packer who, during any three of the preceding five years, purchased for resale more honey than such producer-packer produced shall be eligible for nomination or appointment to the Honey Board as a producer or as an alternate to such producer.

* * * * *

6. Section 1240.34 is amended by revising paragraph (a) to read as follows:

§ 1240.34 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant, except that if, as a result of the adjustment of the boundaries of the regions in accordance with § 1240.32(b)(6), a producer member or alternate is no longer from the region from which such person was appointed, such member or alternate may serve out the term for which such person was appointed.

* * * * *

7. Section 1240.38 is amended by revising paragraph (k) to read as follows:

§ 1240.38 Duties.

* * * * *

(k) To notify honey producers, producer-packers, handlers, importers, and exporters of all Board meetings through press releases or other means;

* * * * *

8. Section 1240.41 is amended by revising paragraph (c), redesignating paragraphs (h) through (l) as (i) through (m), and adding new paragraph (h) to read as follows:

§ 1240.41 Assessments.

* * * * *

(c) The assessment on honey shall be levied at a rate fixed by the Secretary which shall be $0.01 per pound of honey or honey used in honey products.

* * * * *

(h) Should a first handler or the Secretary fail to collect an assessment from a producer, the producer shall be responsible for the payment of the assessment to the Board.

* * * * *

9. Section 1240.42 is amended by revising paragraph (a), redesignating paragraphs (c) and (d) as paragraphs (e) and (f), respectively, redesignating paragraph (b) as paragraph (c) and revising it, adding new paragraphs (b) and (d) to read as follows:

§ 1240.42 Exemption from assessment.

(a) A producer who produces less than 6,000 pounds of honey per year, or a producer-packer who produces and handles less than 6,000 pounds of honey per year or an importer who imports less than 6,000 pounds of honey per year on honey which such person distributes directly through local retail outlets such as roadside stands, farmers markets, groceries, or other outlets as otherwise determined by the Secretary, during such year shall be eligible for an exemption from the assessment.

(b) A producer or importer who consumes honey at home or donates honey to a nonprofit, government, or other entity, as determined appropriate by the Secretary, rather than sell such honey shall be exempt from the assessment, except for honey donated that is later sold in a commercial outlet by a donee or donee's assignee.

(c) To claim such exemption, a producer, producer-packer, or importer shall submit an application to the Board stating the basis on which the person claims the exemption for such year.

(d) If, after a person claims an exemption from assessments for any year under this subparagraph, and such person no longer meets the requirements of this subparagraph for an exemption, such person shall file a report with the Board in the form and manner prescribed by the Board and pay an

assessment on or before March 15 of the subsequent year on all honey produced or imported by such person during the year for which the person claimed the exemption.

* * * * *

10. Section 1240.43 is amended by revising paragraph (a) to read as follows:

§ 1240.43 Producer, importer, and State assessment plan refund.

(a) Any producer or importer who pays an assessment under the authority of this part shall have the right to demand and receive from the Board a refund of such assessment upon submission of proof to the staff of the Board that the producer or importer paid the assessment for which refund is sought. The amount of refunds during any year made to an importer, as a percentage of total assessments collected from such importer, shall not exceed the amount of refunds made to domestic producers, as a percentage of total assessments collected from such producers. Any demand for refund shall be made by the producer or importer within the time and in the manner prescribed by the Board and approved by the Secretary. Refunds made in accordance with this section shall be paid by the Board in June and December of each year.

* * * * *

11. Section 1240.50 is revised to read as follows:

§ 1240.50 Reports.

Each handler, importer, or producer-packer, subject to this part, shall be required to report to the employees of the Board, at such times and in such manner as it may prescribe, such information as may be necessary for the Board to perform its duties. Such reports shall include, but shall not be limited to the following:

(a) For handlers or producer-packers total quantity of honey acquired during the reporting period; total quantity handled during such period; amount of honey acquired from each producers, giving name and address of each producer, including those producers who claim exemption from assessment; copy of statment claiming exemption from assessment from those who claim such exemption; assessments collected or collectible during the reporting period; quantity of honey processed for sale from producer-packer's own production; and record of each transaction for honey on which assessment had already been paid, including statement from seller that assessment had been paid.

(b) For importers total quantity of honey imported during the reporting period and a record of each importation of honey during such period, giving quantity, date, and port of entry.

(c) For persons who have an exemption from assessments under § 1240.42 (a) and (b), such information as deemed necessary concerning the exemption including disposition of exempted honey.

12. Section 1240.51 is revised to read as follows:

§ 1240.51 Books and records.

Each handler, importer, producer-packer, or any person who receives an exemption from assessments shall maintain and during normal business hours make available for inspection by employees of the Board or the Secretary, such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any required reports. Such records shall be maintained for two years beyond the first period of their applicability.

13. Section 1240.62 is amended by revising paragraph (b), redesignating paragraph (c) as paragraph (d), and adding new paragraph (c) to read as follows:

§ 1240.62 Suspension or termination.

* * * * *

(b) Except as otherwise provided in paragraph (c) of this subpart, five years from the date the Secretary issues an order authorizing the collection of assessments on honey under provisions of this subpart, and every five years thereafter, the Secretary shall conduct a referendum to determine if honey producers and importers favor the termination or suspension of this subpart.

(c) In lieu of the first referendum otherwise required to be conducted under paragraph (b) of this section for the order in effect, the Secretary shall conduct a referendum to determine if honey producers and importers favor:

(1) Continuation of the order; and

(2) Termination of the authority for producers and importers to obtain a refund of assessments under § 1240.43 (a) and (b).

* * * * *

14. Section 1240.67 is revised to read as follows:

§ 1240.67 Patents, copyrights, inventions, and publications.

Except for a reasonable royalty paid to the inventor of a patented invention, any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the Honey Board. Funds generated by such patents, copyrights inventions, product formulations, or publications shall inure to the benefit of the Board and shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board.

15. Section 1240.106 is revised to read as follows:

§ 1240.106 Communications.

Communications in connection with the Order and all rules, regulations, and supplemental Orders issued thereunder shall be addressed to the National Honey Board, 421 21st Street, suite 203, Longmont, Colorado 80501–1421.

16. Section 1240.114 is amended by revising paragraph (a) to read as follows:

§ 1240.114 Exemption procedures.

(a) Producers who produce, producer-packers who produce and handle, and importers who import honey and who wish to claim an exemption from assessments pursuant to § 1240.42 (a) and (b) should submit an application to the Board for a certificate of exemption.

* * * * *

17. Section 1240.115 is amended by revising paragraph (c)(1), revising paragraph (c)(2)(i), removing paragraph (c)(2)(ii), redesignating paragraph (c)(2)(iii) as paragraph (c)(2)(ii), and revising paragraph (d) to read as follows:

§ 1240.115 Levy of assessments.

* * * * *

(c) * * *

(1) The first handler shall collect and pay assessments to the Board unless such handler has received documentation acceptable to the Board that the assessment has been previously paid.

(2) * * *

(i) Such producer-packer has obtained an exemption from the Board applicable to the honey he or she produced or produced and handled; or

* * * * *

(d) Assessments shall be levied with respect to honey pledged as collateral for a loan under the Commodity Credit Corporation (CCC) Honey Price Support Program in accordance with an agreement entered into between the Honey Board and the CCC. The assessment will be deducted from the proceeds of the loan by the CCC and forwarded to the Board, except that the assessment shall not be deducted in the case of a honey marketing cooperative that has already deducted the assessment or that portion of the

assessment paid to a qualified State plan exempted by the Board. The Secretary, through the CCC, shall provide for the producer to receive a statement of the amount of the assessment deducted from the loan funds or loan deficiency payment promptly after each occasion when an assessment is deducted from any such loan funds or payment under this subsection.

* * * * *

18. Section 1240.116 is amended by revising paragraph (a) to read as follows:

§ 1240.116 Payment of assessments.

(a) Responsibility for payment. Unless otherwise authorized by the Board under the Act and Order, the first handler or producer-packer shall collect the assessment from the producer, or deduct such assessment from the proceeds paid to the producer on whose honey the assessment is made, and remit the assessments to the Board. The first handler or producer-packer shall furnish the producer with evidence of such payment. Any such collection or deduction of assessment shall be made not later than the time when the assessment becomes payable to the Board. Failure of the handler or producer-packer to collect or deduct such assessment does not relieve the handler or producer-packer of his or her obligation to remit the assessment to the Board. Should a first handler or the Secretary fail to collect an assessment from a producer, the producer shall be responsible for the payment of the assessment to the Board. Assessments on imported honey and honey products shall be collected as specified in § 1240.115(e); *Provided,* That importers shall be responsible for payment of any assessment amount not collected by the U.S. Customs Service at the time of entry or withdrawal for consumption into the United States.

* * * * *

19. Section 1240.118 is revised to read as follows:

§ 1240.118 Reports of disposition of exempted honey.

The Board may require reports by first handlers, producer-packers, importers, or any persons who receive an exemption from assessments under § 1240.42 (a) and (b) on the handling and disposition of exempted honey. Also, authorized employees of the Board or the Secretary may inspect such books and records as are appropriate and necessary to verify the reports on such disposition.

20. Section 1240.120 is revised to read as follows:

§ 1240.120 Retention period for records.

Each first handler, producer-packer, importer, or any person who receives an exemption from assessments under § 1240.42 (a) and (b) required to make reports pursuant to this subpart shall maintain and retain for at least two years beyond the marketing year of their applicability: One copy of each report made to the Board, records of all exempt producers, producer-packers, and importers including certification of exemption as necessary to verify the address of such exempt person and such records as are necessary to verify such reports.

21. Section 1240.121 is revised to read as follows:

§ 1240.121 Availability of records.

Each first handler, producer-packer, importer, or any person who receives an exemption from assessments under § 1240.42 (a) and (b) required to make reports pursuant to this subpart shall make available for inspection by authorized employees of the Board or the Secretary during regular business hours, such records as are appropriate and necessary to verify reports required under this subpart.

22. Section 1240.122 is revised to read as follows.

§ 1240.122 Confidential books, records, and reports.

All information obtained from the books, records, and reports of handlers, producer-packers, importers or any persons who receive an exemption from assessments under § 1240.42 (a) and (b) and all information with respect to refunds of assessments made to individual producers and importers shall be kept confidential in the manner and to the extent provided for in § 1240.52 of the Order.

23. Section 1240.200 is revised to read as follows.

§ 1240.200 General.

Referenda to determine whether eligible producers and importers favor the termination or suspension of a Honey Research, Promotion, and Consumer Information Order shall be conducted in accordance with this subpart.

24. Section 1240.201 is amended by revising paragraphs (h) an (i) to read as follows.

§ 1240.201 Definitions.

* * * * *

(h) *Eligible producer* means any person defined as a producer or producer-packer in the order who produces, or handles, or produces and handles honey or honey products and who does not claim an exemption from paying assessments during the representative period and who:

(1) Owns or shares in the ownership of honey bee colonies or beekeeping equipment resulting in the ownership of the honey produced;

(2) Rents honey bee colonies or beekeeping equipment resulting in the ownership of all or a portion of the honey produced; or

(3) Owns honey bee colonies or beekeeping equipment but does not manage them and, as compensation, obtains the ownership of a portion of the honey produced;

(4) Is a party in a lessor-lessee relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce honey who share the risk of loss and receive a share of the honey produced.

No other acquisition of legal title to honey shall be deemed to result in persons becoming eligible producers.

(i) *Eligible importer* means any person defined as an importer in the order, engaged in the importation of honey and/or honey products and who does not claim an exemption from paying assessments during the representative period. Importation occurs when commodities originating outside the United States are released from custody of the U.S. Customs Service and introduced into the stream of commerce within the United States. Included are persons who hold title to foreign-produced honey and/or honey products immediately upon release by the Customs Service, as well as any persons who act on behalf of others, as agents or brokers, to secure the release of honey and/or honey products from Customs and introduce them into the current of commerce.

* * * * *

25. Section 1240.203 is amended by revising paragraph (e) to read as follows.

§ 1240.203 Instructions.

* * * * *

(e) Make available to eligible producers and importers the instructions on voting, appropriate ballot and certification forms, and, except in the case of a referendum on the termination or suspension of an order, a summary of the terms and conditions of the order; *Provided,* That no person who claims to be eligible to vote shall be refused a ballot.

* * * * *

Dated: April 12, 1991.

Daniel D. Haley,

Administrator.

[FR Doc. 91–9133 Filed 4–18–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AA

Wage and Hour Division

29 CFR Part 506

RIN 1215–AA

Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

AGENCIES: Employment and Training Administration, Labor; and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: The Employment and Training Administration (ETA) and the Employment Standards Administration (ESA) of the Department of Labor (DOL or Department) are promulgating proposed regulations governing the filing and enforcement of attestations by employers seeking to use alien crewmembers to perform longshore work at U.S. ports. Under the Immigration and Nationality Act, as amended by the Immigration Act of 1990 (IA), employers are, in certain circumstances, required to submit these attestations to DOL in order to be allowed by the Immigration and Naturalization Service (INS) to use alien crewmembers to perform specified longshore activity(ies) at U.S. ports. The attestation process is to be administered by ETA, while complaints and investigations regarding the attestations are to be handled by ESA.

DATES: Written comments on the proposed rule are invited from interested parties. Comments shall be received by May 3, 1991.

ADDRESSES: Submit comments to: Roberts T. Jones, Assistant Secretary, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Immigration Task Force, room N–4470.

FOR FURTHER INFORMATION CONTACT: On 20 CFR part 655, subpart F, and 29 CFR part 506, subpart F, contact David O. Williams, Chair, Immigration Task Force, Employment and Training Administration, Department of Labor, room N–4470, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–535–0174 (this is not a toll-free number).

On 20 CFR part 655, subpart G, and 29 CFR part 506, subpart G, contact Mr. Solomon Sugarman, Chief, Farm Labor Programs, Wage and Hour Division, Employment Standards Administration, Department of Labor, room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–535–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The information collection requirements contained in the rule have been submitted to the Office of Management and Budget for clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

ETA estimates that approximately 5,000 employers per year will be submitting attestations. The public reporting burden for this collection of information is estimated to average 3–4 hours per response, including the time for reviewing instructions, searching existing information/data sources, gathering and maintaining the information/data needed, and completing and reviewing the attestation. It is likely that the burden will be considerably less in the second and subsequent years in which an employer submits an attestation.

Written comments on the collection of information requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Employment and Training Administration, Washington, DC 20503.

II. Background

On November 29, 1990, the Immigration Act of 1990 (IA), Public Law 101–649, 104 Stat. 4978, was enacted. The Act amends the Immigration and Nationality Act (INA) (8 U.S.C. 1101 *et seq.*) and assigns responsibility to the Department of Labor (Department or DOL) for the implementation of several provisions relating to the entry of certain categories of employment-based immigrants and to the temporary employment of certain categories of nonimmigrants. One of the new provisions of the INA the Department is charged with implementing is Section 258, which places limitations on the performance of longshore work by alien crewmembers in U.S. ports. 8 U.S.C. 1288.

The loading and unloading of ships has been traditionally performed by U.S. longshore workers. However, until now, alien crewmembers had also been allowed (by Immigration and Naturalization Service regulation) to do this kind of work in U.S. ports, because longshore work was considered to be within the scope of permitted employment for alien crewmembers. The Immigration Act of 1990 has limited this practice in order to provide greater protection to U.S. longshore workers.

Section 258 of the INA prohibits alien crewmembers admitted with D-visas from performing longshore work except in four specific instances: (a) Where the ship's country of registration permits U.S. crewmembers to perform longshore work in that country's ports; (b) where there is in effect in a local port one or more collective bargaining agreement(s), each covering at least 30 percent of the longshore workers at a particular port and each permitting the activity to be performed by alien crewmembers; (c) where there is no collective bargaining agreement covering at least 30 percent of the longshore workers and an attestation has been filed with the Department which states that the use of alien crewmembers to perform longshore work is permitted under the prevailing practice of the port, that the use of alien crewmembers is not during a strike or lockout, that such use is not intended or designed to influence the election of a collective bargaining representative, and that notice has been provided to longshore workers at the port; and (d) where the activity is performed with the use of automated self-unloading conveyor belts or vacuum-actuated systems, provided that the Secretary of Labor has not found that an attestation is required because it was not prevailing practice to utilize alien crewmembers to perform the activity or because the activity was performed during a strike or lockout or in order to influence the election of a collective bargaining representative. The term "longshore work" does not include the loading or unloading of hazardous cargo, as determined by the Secretary of Transportation, for safety and environmental protection.

In developing the proposed regulations set forth below to implement Section 258 of the INA at 20 CFR part 655, subparts F and G, and 29 CFR part 506, subparts F and G, the Department has carefully considered the issues pertinent to the filing of attestations by employers to use alien crewmembers for longshore activities in U.S. ports, and to the automated vessel exception. Issues of concern addressed by the Department

included: definition of and criteria for determining longshore prevailing practice at U.S. ports; applicability of the attestation process in relation to the statutory precondition that there be no collective bargaining agreement covering 30 percent of the longshore workers in the port; level of review of employer attestations; documentation requirements for the attestation process; directions to employers on when and where to file attestations; automated vessels' exemption from the attestation process; and guidelines for providing notice to longshore workers or their bargaining representative at the port. The Department is especially interested in public comment on these issues as they represent major areas of responsibility to be administered by the Department under the INA for which explicit guidance is not contained in the statute.

III. Attestation Process and Requirements

An employer seeking to employ alien crewmembers for a particular activity of longshore work under the prevailing practice exception shall submit an attestation. An attestation is required for each port at which the employer intends to use alien crewmembers for longshore work.

A. When and Where to File

The proposed regulations require that any attestation received less than 14 days prior to the first performance of longshore activity by alien crewmembers will be returned to the employer as unacceptable, unless the delay is due to an unanticipated emergency. The Department proposes to require that crewmember attestations be submitted to and accepted by an ETA regional office—e.g., the Chicago and Dallas regional offices have been proposed as the designated offices since it is anticpated that employers using ports on the Great Lakes and the Gulf of Mexico will utilize alien crewmembers for this activity.

The ETA shall make available for public examination in Washington, DC, a list of employers which have filed attestations, and for each such employer, a copy of the employer's attestation and accompanying documentation in a timely manner after the acceptance of the attestation.

B. Acceptance for Filing

In accepting an attestation for filing, the proposed regulations require: That the application be received by ETA at least 14 days before the first performance of the longshore activity (unless an unanticipated emergency exists as defined herein); that the Department review an attestation only to ensure that it is completed properly, that it is accompanied by the required documentation specified in the regulations, and that the documentation is not, on its face, inconsistent with the attestation; and that the attestation does not involve a port or an employer for which the Department has previously made a determination which would preclude its acceptance.

Level of Federal Review of Attestations

In determining the Department's general approach to its review of employer attestations, the Department considered various approaches, ranging from the filing of all attestations with not review for completeness or compliance to a thorough review of each attestation and the accompanying documentation to determine whether the facts and evidence submitted are sufficient to prove each attestation element. The Department proposes to review an attestation to ensure that it is received at least 14 days prior to the first performance of the longshore activity, unless due to an unanticipated emergency, that it is completed properly, that it has accompanying documentation for each element attested to, and that the documentation is not, on its face, inconsistent with the attestation. In addition, the Department proposes that it will review attestations to determine the following: (1) Whether the Administrator, Wage and Hour Division, has found that it is not a prevailing practice to use alien crewmembers for a particular activity of longshore work for a port; (2) whether the Administrator has advised ETA that it has issued a cease and desist order currently in effect that would affect the attesting employer; (3) whether the Administrator has advised ETA of a determination that an employer has misrepresented or failed to comply with an attestation previously submitted and accepted for filing, requiring the Attorney General to bar the employer from entry to any U.S. port for up to one year; and (4) whether the Administrator has advised ETA that the employer has failed to comply with any penalty or remedy assessed.

Statutory Precondition

The Act provides that attestations can only be filed where "there is no collective bargaining agreement in effect in the local port covering at least 30 percent of the number of individuals employed in performing longshore work * * * " Similarly, an employer cannot avail itself of the automated vessel exception if there is a collective bargaining agreement in effect covering 30 per cent or more of the individuals employed in longshore work at the port.

It appears to the Department that this statutory precondition to filing an attestation to use the prevailing practice exemption is not specified in the statute as an element to be attested to by an employer. Thus it is the Department's view that in those ports where a collective bargaining agreement covering 30 percent or more of the longshore workers is in effect, the INS has the enforcement responsibility pertaining to the use of alien crewmembers for longshore work. Therefore, any complaints that the statutory precondition is not met must be referred to and handled by the INS (not the Department of Labor). Such employers would, consequently, be subject only to remedies/sanctions available to INS (not to those remedies/sanctions provided in this section of the INA regarding attestations administered and enforced by the Department of Labor).

Appeals Process

This proposed rule does not include an administrative appeal process related to attestations. When an attestation is returned because it is untimely, improperly completed, or lacking proper documentation an employer may resubmit another attestation to the Department. Attestations which are accepted by ETA may be objected to by an aggrieved party through the complaint process in proposed subpart G, and procedures for investigation, hearing and appeal are provided therein. Where the Administrator makes a finding regarding a prevailing practice issue, a **Federal Register** notice will be published to afford appeal rights to all potentially affected parties. The Department believes that this is consistent with the statutes's intent for a streamlined attestation system for filing and a complaint-driven process for the enforcement of the law's requirements.

C. Attestation Elements

Prevailing Practice

The proposed regulations rely on employer certification and documentation of prevailing practice for the particular activity of longshore work performed. Longshore Work is defined in the statute as any activity (except safety and environmental protection work as described in section 258(b)(2) of the INA) relating to: (1) Loading of cargo; (2) unloading of cargo; (3) operation of cargo-related equipment (whether or not integral to the vessel), or

(4) handling of mooring lines on the dock when a vessel is made fast or let go.

Under this proposal, the employer must submit facts and evidence with the attestation to show that in the year preceding the filing of the attestation one of the following conditions existed: (1) Over 50 percent of vessels docking at the port used alien crewmembers for the longshore activity; (2) alien crewmembers made up over 50 percent of the workers who engaged in the activity; or (3) in relation to loading and unloading activity, over 50 percent of the cargo (measured in tonnage) was loaded or unloaded by alien crewmembers.

Facts and evidence to support the prevailing practice exception shall include affidavits or summary statements of items like: Prevailing practice surveys of ship masters' experience and written statements from the port authority regarding port practice. Statements from collective bargaining representatives or shipping agents, etc., with knowledge of practices in the port in question may also be pertinent. In the event a complaint is filed with the Department on an attestation, the employer must have sufficient documentation available on file at the place of business of its U.S. agent to meet the burden of proof for the validity of each attestation element. Documentation submitted or retained pursuant to this part shall either be in English or be accompanied by an English translation.

In defining "permitted under the prevailing practice," the Department considered various alternatives. For example, the Department studied the possibility that this exception allowed alien crewmembers to perform longshore work in any port where such activity has been performed by such aliens, regardless of the frequency of employers using alien crewmembers for such work and regardless of the frequency of alien crewmembers involved in peforming such work. The Conference Report states that "where a prevailing practice has long been accepted by all local interests concerned, attestations of that practice may be filed." One alternative that the Department is considering, which will allow the continuation of longshore activity where is has "long been accepted," is to require the employer to demonstrate that the specific activity has been permitted over a long period of time—e.g., two to three years. The onus will be on the employer to prove and document that the activity has been permitted under the prevailing practice for that port. If the Department adopts this alternative at the interim final rule stage, regulatory language to this effect might read: "Where an employer can demonstrate that the use of alien crewmembers for a specific activity has been permitted in a particular port in each of the three preceding years, the employer may file an attestation to that fact. Specifically, the employer shall attest and be able to demonstrate that any alien crewmember(s) has/have actually performed the particular activity in the port in each of the three preceding years. Documentation requirements are described at section ____.501(d)(2). No attestation may be filed for a particular activity in a port where alien crewmembers have been prohibited from performing that activity in any of the three preceding years. For each port, a prevailing practice may be established for each of four different activities of longshore work: Loading of cargo, unloading of cargo, operation of cargo-related equipment, or handling of mooring lines."

The other alternative that the Department is considering is to define the term "prevailing practice" in order to determine what activity performed by alien crewmembers would be "permitted," and to avoid confusion as to what "prevailing" means. Options for this definition fell in a broad range, including: (1) Employer certifies that it has used alien crewmembers in the past under a self-defined prevailing practice; (2) employer attests that the activity is permitted in regard to a specific cargo under the prevailing practice for that port; (3) the Department applies the prevailing practice standard for the port based on its existing prevailing practice definition in the agricultural foreign worker program, i.e., the "double majority" which defines a prevailing practice as existing where both a majority of employers use alien crewmembers for longshore activities and where alien crewmembers constitute a majority of the workers performing longshore work in the port; and, (4) "prevailing practice" is defined as a simple majority of any one or more of the four different types of longshore activity permitted to be performed in the port measured in one of three ways.

For the purposes of the proposed rule, the Department chose option (4) as a definition that is precise and measurable so that employers know what is required and the Department can enforce these requirements fairly. This approach is consistent with other Departmental regulatory definitions of "prevailing" which use the concept of a simple majority, yet still affords flexibility.

The Department is greatly interested in comments regarding these two alternatives or other suggestions so that it may make a more informed decision in its Interim Final Rule. Comments are specifically sought on the appropriate percentage to be used to determine "prevailing," e.g., 10 percent, 30 percent, 50 percent, or any other number, should the Department finally adopt the alternative which uses a numerical measurement.

The Department also considered what entity should be responsible for making determinations of prevailing practice, the type of data that should be used, and the type of documentation required to support such a determination. The legislative history suggests, and the Department proposes, a process which would rely on employer certification of prevailing practice. The consequence, however, is that if the Administrator determines that an employer erroneously attests as to port practice, the statute mandates that the employer be barred by the Attorney General from entering U.S. ports for up to one year. DOL will recommend to the Attorney General that a lesser period be imposed where an employer has attested in good faith, with a reasonable belief that the documentation available is indicative that the attested longshore activity(ies) prevail. In addition, the proposed regulation provides that if, under such circumstances, an employer withdraws an attestation prior to performance of the activity(ies) in the port, the Administrator will not find reasonable cause to conduct an investigation unless it is alleged and reasonable cause is indicated that an employer made misrepresentations or did not give the required notice.

Strike, Lockout, Election

The employer must also attest that, at the time of submitting the attestation, there is not a strike or lockout in the course of a labor dispute in the port relating to the employer's longshore activity, and that it will not use alien crewmembers during a strike or lockout during the validity period of the attestation. To substantiate this requirement, an employer may submit a statement which indicates that, prior to submitting its attestation, the employer made a good faith effort to determine whether there is a strike or lockout at the particular port, as for example, by contacting the port authority or the collective bargaining representative(s) for longshore workers at the particular port.

Notice

Lastly, an employer of alien crewmembers must attest that at the time of filing the attestation, notice of the filing has been provided to the bargaining representative(s), or where there is no such bargaining representative(s), notice of the filing has been provided to longshore workers employed at the local port. After considering a variety of approaches for providing notice to longshore workers where there is no bargaining representation, including public advertisements in newspapers and/or radio, the Department proposes to require that employers deliver a copy of the notice to the local port authority for public distribution on request. In addition, employers are required to post the notice in conspicuous locations at the port where U.S. longshore workers can readily see the notice on their way to perform their longshore duties. The notice shall include a copy of the Form ETA 9033, shall state that the attestation with accompanying documentation has been filed and is available at the national office of ETA for review by interested parties, and shall explain where complaints can be filed with respect to employer attestations. DOL believes appropriate places for posting such notices include locations where other announcements and legally required notices, such as mandatory Fair Labor Standards Act wage and hour notices and Occupational Safety and Health Act notices, are posted. In addition, the Department proposes to periodically publish in the **Federal Register** a list of employers who have submitted attestations.

IV. Complaints, Investigations, and Dispositions

The Act provides that the Secretary shall establish complaint, investigation, and hearing procedures and authorizes the Secretary to issue cease and desist orders against employers. The Secretary's enforcement responsibilities are assigned to the Administrator, Wage and Hour Division, of the Employment Standards Administration.

A. Complaint, Investigation and Hearing

Section 258(c)(4) requires that the Secretary establish a system to conduct investigations where a complaint presents reasonable cause to believe that an attesting employer failed to meet a condition attested to or misrepresented a material fact in its attestation, or that a non-attesting employer claiming the automated vessel exception was not qualified for the exception because the performance of the associated longshore activity does not prevail in the port, or because the activity was performed during a strike or lockout or to influence the election of a collective bargaining representative. These regulations propose that the Wage and Hour Administrator may conduct investigations of potential violations of the law only pursuant to a complaint. The Department believes, based on the legislative history, that this carries out Congressional intent that the enforcement of the statute should be exclusively complaint-driven. The investigative process is to be completed and a determination issued in a 180-day period, or a longer period for good cause shown. Any aggrieved person may file a complaint.

The Department proposes that, after determining that there is reasonable cause to believe that an investigation is warranted, the Wage and Hour Division will conduct an investigation in which appropriate consideration is given to any previous and relevant Departmental determination as to the prevailing practice for the particular longshore activity(ies) and U.S. port at issue. Further, the proposed regulations provide that, in investigating an attesting employer, the Administrator shall consider the employer's statutory burden to present and retain facts and evidence to show the matters attested. The regulations also require that the employer cooperate in the investigation and take no retaliatory action against persons who file complaints, assist in the investigation, or participate in administrative proceedings.

The proposed regulations provide that, after the investigation is complete and a determination is made only with respect to an issue of the prevailing practice for using (or not using) alien crewmembers to perform particular longshore activity(ies) at a particular port (whether the investigation involves an attesting employer, or an employer claiming the automated vessel exception), the Department shall publish a **Federal Register** notice to advise any interested party(ies) of the Department's determination about the prevailing practice at issue and to provide any interested party(ies) the opportunity to request a hearing on the determination before an administrative law judge (ALJ). If no timely request for hearing is filed, or after an ALJ decision is issued which reverses the Administrator's determination or which establishes that the use of alien crewmembers is not the prevailing practice of particular longshore activity(ies) at the particular port (whether or not the later ALJ decision is a reversal of the Administrator's determination), the Department will publish a second **Federal Register** notice advising of the disposition of the prevailing practice issue. Should an ALJ's decision be further appealed to the Secretary, and the Secretary reverse the ALJ decision, the Department will publish a third notice in the **Federal Register** announcing the Secretary's decision and its effect for the prevailing practice for the activity(ies) and port in question.

Under the proposed regulations, the second **Federal Register** notice will constitute formal advice to the public. Effective upon publication of the second **Federal Register** notice, ETA will no longer accept an attestation from any employer which attests to a prevailing practice that is contrary to the published determination by the Department. Additionally, as proposed in subpart F, ETA will review attestations previously accepted for filing from other employers to determine if a heretofore accepted attestation of prevailing practice would clearly be nullified by the Department's published determination. Where it is easily identified that the employer's attestation regards the subject prevailing practice, ETA will either suspend or invalidate the attestation and so notify the employer. Where it is unclear whether the employer's accepted attestation regards the subject prevailing practice, the employer will need to make a determination, based upon the second **Federal Register** notice, whether to withdraw its valid attestation. Also effective upon publication of the second **Federal Register** notice, INS will not permit the use of alien crewmembers to perform the specified activity(ies) at the port (whether the employer asserts that it has an attestation on file with ETA for such activity(ies) at such port, or claims to be entitled to the automated vessel exception). In addition, in any subsequent investigation of any employer regarding the prevailing practice for the particular activity(ies) at the port specified in the second **Federal Register** notice, the Administrator shall give conclusive effect to the determination that the prevailing practice does not permit the use of alien crewmembers. This regulatory provision was deemed necessary because, in the Department's view, to do otherwise would condone illegal activity, since the illegal use of alien crewmembers would be the only manner in which the prevailing practice could have subsequently changed (unless a collective bargaining agreement covering more than 30% of the longshore workers at the port came into effect and

permitted such use of alien crewmembers, in which case the attestation and automated vessel exceptions would no longer be applicable).

B. Administrative Law Judge Hearing and Discretionary Review by the Secretary

Section 258(c)(4)(D) requires that the Secretary provide interested parties an opportunity for a hearing within 60 days of the date of the investigative determination.

Because of this compressed time frame, the proposed regulations require that a request for hearing be filed directly with the Chief Administrative Law Judge no later than 15 days from the date of the Administrator's determination. Further, because of the problems of proof to be anticipated in an administrative hearing on factual issues of prevailing practice which may be virtually impossible to address except through hearsay reports of surveys, or for which crucial witnesses and other evidence may be unavailable except through hearsay since, for example, the witnesses are located outside the U.S., the proposed regulations specify that the Department's rules of evidence for ALJ proceedings shall not apply. In addition, the proposed regulations incorporated the statutory imposition of the burden of proof on the attesting employer to establish the truth of the attestation elements.

An opportunity for discretionary review by the Secretary is afforded by the proposed regulations, with short deadlines in accordance with the statutory intent for expedited dispositions. Any interested party may request such review, and the Secretary shall determine what matters, if any, will be reviewed.

C. Cease and Desist Order

Section 258(c)(4)(C) authorizes the Secretary, at the request of a complainant, to issue a cease and desist order against an attesting employer or against a non-attesting employer claiming the automated vessel exception. The complainant's request may be made when the Secretary has determined there is reasonable cause to conduct an investigation. The Act specifies that, if a complainant requests such an order, the employer will be notified and given 14 days within which to respond. The Secretary is then required to determine whether the preponderance of the evidence submitted supports the complainant's position and, if it does, to order that the employer cease and desist the activity(ies) at issue. The order remains in effect throughout the hearing process for the attesting employer; for the non-attesting employer claiming the automated vessel exception, the order remains in effect throughout the hearing process unless ETA accepts for filing an attestation from that employer for the activity(ies) and port which the cease and desist order affects.

The proposed regulations provide that the complainant who desires a cease and desist order must submit two complete copies of the request and the evidence to substantiate the allegations (the second copy of the request and evidence will be provided to the employer). The Administrator's notice to the employer shall include copies of the complaint, the cease and desist order request and supporting evidence, and any other pertinent evidence from an investigation of the same or a closely related matter which the Administrator incorporates into the record. The employer will, thus, be fully informed as to the allegations and evidence. The Administrator's notice also shall specify that, during the 14 day response period specified by the Act, the Administrator will provide, at the employer's request, an opportunity for a meeting with a Wage and Hour Division official to give the employer's views on the evidence and issues. This meeting shall be informal, shall not be subject to any procedural rules, and shall include the complainant if the complainant so desires.

The proposed regulations specify that the cease and desist order will remain in effect unless and until withdrawn by the Administrator because the employer's position is determined to have been correct or a final determination is made which results in resolution of the matter under investigation, or—in the case of the automated vessel exception—an attestation relating to the longshore activity(ies) is accepted for filing by ETA.

D. Penalties

A violation of the Act of these regulations by an attesting employer may result in the imposition of administrative remedy(ies), such as a civil money penalty not to exceed $5,000 per alien crewmember illegally employed. Upon notice of the violation(s), the Attorney General shall thereafter not permit the vessels owned or chartered by the employer to enter any port of the U.S. during a period of up to one year. Additionally, ETA will be notified and shall thereafter not accept any attestation from the employer for any activity(ies) at any U.S. port for one year (or for a shorter period, if such period is specified by INS).

Upon the Department's final determination that an employer improperly claimed the automated vessel exemption, the Attorney General will be notified and shall thereafter require that, before using alien crewmembers, the employer must have on file with ETA an attestation for the activity(ies) and the port at issue.

V. Summary

The Department welcomes comments on these and any other issues addressed in the regulations and on any issues not addressed that commentors believe need to be addressed. Because of statutory time constraints, the Department will only provide a limited comment period on this proposed rule. The Department will provide a sixty-day comment period, however, upon publication of the interim final rule.

Regulatory Impact and Administrative Procedure

E.O. 12291: The rule does not have the financial or other impact to make it a major rule and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order 12291, 3 CFR, 1981 Comp., Page 127, 5 U.S.C. 601 note.

Regulatory Flexibility Act: The Department of Labor has notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule does not have a significant economic impact on a substantial number of small entities.

Nevertheless, interested parties are requested to submit, as part of their comments on this rule, information on the potential economic impact of the rule.

Catalog of Federal Domestic Assistance Number: This program is not yet listed in the *Catalog of Federal Domestic Assistance.*

List of Subjects

20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Forest and Forest Products, Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Wages.

29 CFR Part 506

Administrative practice and procedures, Aliens, Crewmembers, Employment, Enforcement, Immigration, Labor, Longshore work, Penalties.

Reporting and recordkeeping requirements.

Text of The Proposed Joint Rule

The text of the proposed joint rule as proposed by ETA and the Wage and Hour Division, ESA, in this document appears below:

Subpart F—Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

Sec.

Subpart G—Enforcement of the Limitations Imposed on Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

Sec.

Subpart F—Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

§ ____.500 Purpose, procedure, and applicability of subparts F and G of this part.

(a) *Purpose.* Section 258 of the Immigration and Nationality Act prohibits nonimmigrant alien crewmembers admitted to the United States on D-visas from performing longshore work at U.S. ports except in four specific instances:

(1) Where the ship's country of registration permits U.S. crewmembers to perform longshore work in that country's ports as determined by the Secretary of State;

(2) Where there is in effect in a local port one or more collective bargaining agreement(s), each covering at least thirty percent of the longshore workers, and each permitting the activity to be performed under the terms of such agreement(s);

(3) Where there is no collective bargaining agreement covering at least thirty percent of the longshore workers at the particular port and an attestation with accompanying documentation has been filed with the Department of Labor attesting that, among other things, the use of alien crewmembers to perform a particular activity of longshore work is permitted under the prevailing practice of the particular port (henceforth referred to as the "prevailing practice exception"); or

(4) Where the longshore work involves an automated self-unloading conveyor belt or vacuum-actuated system on a vessel and the Administrator has not determined that an attestation must be filed pursuant to this part as a basis for performing those functions (henceforth referred to as the "automated vessel exception").

The term "longshore work" does not include the loading or unloading of hazardous cargo, as determined by the Secretary of Transportation, for safety and environmental protection. The Department of Justice, through the Immigration and Naturalization Service (INS), determines whether an employer may use alien crewmembers for longshore work at U.S. ports. In those cases where an employer must file an attestation in order to perform such work, the Department of Labor shall be responsible for accepting the filing of such attestations. Subpart F of this part sets forth the procedure for filing attestations with the Department of Labor for employers proposing to use alien crewmembers for longshore work at U.S. ports under the prevailing practice exception and where it has been determined that an attestation is required under the automated vessel exception listed in paragraph (a)(4) of this section. Subpart G of this part sets forth complaint, investigation, and penalty provisions with respect to such attestations.

(b) *Procedure.* Under the prevailing practice exception in section 258(c) of the Act, and in those cases where it has been determined that an attestation is required under the automated vessel exception, the procedure involves filing an attestation with the Department of Labor attesting that:

(1) The use of alien crewmembers for a particular activity of longshore work is the prevailing practice at the particular port;

(2) The use of alien crewmembers is not during a strike or lockout nor designed to influence the election of a collective bargaining representative; and

(3) Notice of the attestation has been provided to the bargaining representative of longshore workers in the local port, or, where there is none, notice has been provided to longshore workers employed at the local port.

Under the automated vessel exception in section 258(c) of the Act, no attestation is required in cases where longshore activity consists of the use of an automated self-unloading conveyor belt or vaccum-actuated system on a vessel unless the Secretary of Labor finds, based on the preponderance of the evidence submitted by an interested party, that the performance of the activity by alien crewmembers is not the prevailing practice at the particular port, is during a strike or lockout, or is intended or designed to influence an election of a bargaining representative for workers in the local port.

(c) *Applicability.* Subparts F and G of this part apply to all employers who seek to employ alien crewmembers for longshore work at U.S. ports under the prevailing practice exception, and to those cases where it has been determined that an attestation is required under the automated vessel exception.

§ ____.501 Overview of responsibilities.

This section provides a context for the attestation process, to facilitate understanding by employers that may seek to employ alien crewmembers for longshore work under the prevailing practice exception and in those cases where an attestation is necessary under the automated vessel exception.

(a) *Department of Labor's responsibilities.* The United States Department of Labor (DOL) administers the attestation process. Within DOL, the Employment and Training Administration (ETA) shall have responsibility for setting up and operating the attestation process; the Employment Standards Administration's Wage and Hour Division shall be responsible for investigating and resolving any complaints filed concerning such attestations.

(b) *Employer attestation responsibilities.* Each employer seeking to use alien crewmembers for longshore work at a local U.S. port pursuant to the prevailing practice exception, or where an attestation is required under the

automated vessel exception shall, as the first step, submit an attestation on Form ETA 9033, as described in § ____.510 of this part, to ETA at the address set forth at § ____.510(b) of this part. If ETA accepts the attestation for filing, pursuant to § ____.510 of this part, ETA shall return the cover form of the accepted attestation to the employer, and, at the same time, shall notify the Immigration and Naturalization Service (INS) of the filing.

(c) *Complaints.* Complaints concerning misrepresentation in the attestation, failure of the employer to carry out the terms of the attestation, or complaints that an employer is required to file an attestation under the automated vessel exception, may be filed with the Wage and Hour Division, according to the procedures set forth in subpart G of this part. Complaints of "misrepresentation" may include assertions that an employer has attested to the use of alien crewmembers only for a particular activity of longshore work and has thereafter used such alien crewmembers for another activity of longshore work. If the Division determines that the complaint presents reasonable cause to warrant an investigation, the Division shall then investigate, and, where appropriate, after an opportunity for a hearing, assess sanctions and penalties. Subpart G further provides that interested parties may obtain an administrative law judge hearing on the Division's determination after an investigation and may seek the Secretary's review of the administrative law judge's decision. Subpart G also provides that a complainant may request that the Wage and Hour Administrator issue a cease and desist order in the case of either alleged violation(s) of an attestation or longshore work by alien crewmember(s) employed by an employer allegedly not qualified for the claimed automated vessel exception. Upon the receipt of such a request, the Division shall notify the employer, provide an opportunity for a response and an informal meeting, and then rule on the request, which shall be granted if the preponderance of the evidence submitted supports the complainant's position.

§ ____.502 Definitions.

For the purposes of subparts F and G of this part:

Accepted for filing means that a properly completed attestation including accompanying documentation for each of the requirements in § ____.510 (d) through (f) of this part submitted by the employer or its designated agent or representative has been received and filed by the Employment and Training Administration of the Department of Labor (DOL). (Unacceptable attestations are described at § ____.510(g)(2).)

Act and *INA* mean the Immigration and Nationality Act, as amended, 8 U.S.C. 1101 *et seq.*

Activity means loading cargo; unloading cargo; operation of cargo-related equipment; or handling of mooring lines on the dock when a vessel is made fast or let go.

Administrative law judge means an official appointed pursuant to 5 U.S.C. 3105.

Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, Department of Labor, or such authorized representatives as may be designated to perform any of the functions of the Administrator under subparts F and G of this part.

Attestation means documents submitted by an employer attesting to and providing accompanying documentation to show that the use of alien crewmembers for a particular activity of longshore work at a particular U.S. port is the prevailing practice, and is not during a strike or lockout nor intended to influence an election of a bargaining representative for workers; and that notice of the attestation has been provided to the bargaining representative, or, where there is none, to the longshore workers at the local port.

Attesting employer means an employer who has filed an attestation.

Attorney General means the chief official of the U.S. Department of Justice or the Attorney General's designee.

Automated vessel means a vessel equipped with an automated self-unloading conveyor belt or vacuum-actuated system which is utilized for loading or unloading cargo between the ship and the dock.

Certifying Officer means a Department of Labor official who makes determinations about whether or not to accept attestations:

(1) A regional Certifying Officer designated by a Regional Administrator, Employment and Training Administration (RA) makes such determinations in a regional office of the Department;

(2) A national Certifying Officer makes such determinations in the national office of the USES.

Chief, Division of Foreign Labor Certifications, USES means the chief official of the Division of Foreign Labor Certifications within the United States Employment Service, Employment and Training Administration, Department of Labor, or the designee of the Chief, Division of Foreign Labor Certifications, USES.

Chief Administrative Law Judge means the chief official of the Office of the Administrative Law Judges of the Department of Labor or the Chief Administrative law Judge's designee.

Crewmember means any nonimmigrant alien admitted to the United States to perform services under sec. 101(a)(15)(D)(i) of the Act (8 U.S.C. 1101(a)(15)(D)(i)).

Date of filing means the date an attestation is "accepted for filing" by ETA.

Department and *DOL* mean the United States Department of Labor.

Director means the chief official of the United States Employment Service (USES), Employment and Training Administration, Department of Labor, or the Director's designee.

Division means the Wage and Hour Division of the Employment Standards Administration, DOL.

Employer means a person, firm, corporation, or other association or organization, which suffers or permits, or proposes to suffer or permit, alien crewmembers to perform longshore work at a port within the U.S.

Employment Standards Administration (ESA) means the agency within the Department of Labor (DOL) which includes the Wage and Hour Division.

Employment and Training Administration (ETA) means the agency within the Department of Labor (DOL) which includes the United States Employment Service (USES).

Immigration and Naturalization Service (INS) means the component of the Department of Justice which makes the determination under the Act on whether an employer of alien crewmembers may use such crewmembers for longshore work at a U.S. port.

Lockout means a labor dispute involving a work stoppage, wherein an employer withholds work from its employees in order to gain a concession from them.

Longshore work means any activity (except safety and environmental protection work as described in section 258(b)(2) of the Act) relating to the loading or unloading of cargo, the operation of cargo related equipment (whether or not integral to the vessel), or the handling of mooring lines on the dock when the vessel is made fast or let go, in the United States or the coastal waters thereof.

Longshore worker means a U.S. worker who performs longshore work.

Port means a place, either on a seacoast, lake, river or any other navigable body of water, where ships bearing alien crewmembers are permitted by the immigration laws to stop for the purpose of loading and unloading cargo.

Regional Administrator, Employment and Training Administration (RA) means the chief official of the Employment and Training Administration (ETA) in a Department of Labor (DOL) regional office.

Secretary means the Secretary of Labor or the Secretary's designee.

Strike means a labor dispute wherein employees engage in a concerted stoppage of work (including stoppage by reason of the expiration of a collective-bargaining agreement) or engage in any concerted slowdown or other concerted interruption of operations.

Unanticipated emergency means an unexpected and unavoidable situation, such as one involving severe weather conditions, natural disaster, or mechanical breakdown, where cargo must be immediately loaded on, or unloaded from, a vessel.

United States is defined at 8 U.S.C. 1101(a)(38).

United States Employment Service (USES) means the agency of the Department of Labor, established under the Wagner-Peyser Act, which is charged with administering the national system of public employment offices.

United States (U.S.) worker means a worker who is a U.S. citizen, a U.S. national, a permanent resident alien, or any other worker legally permitted to work indefinitely in the United States.

§ ____.510 Employer attestations.

(a) *Who may submit attestations?* An employer (or the employer's designated agent or representative) seeking to employ alien crewmembers for a particular activity of longshore work under the prevailing practice exception shall submit an attestation, provided there is not in effect in the local port any collective bargaining agreement covering at least 30 percent of the longshore workers. An attestation is required for each port at which the employer intends to use alien crewmembers for longshore work. The attestation shall include: A completed Form ETA 9033, which shall be signed by the employer (or the employer's designated agent or representative); and facts and evidence prescribed in paragraphs (d) through (f) of this section.

(b) *Where and when should attestations be submitted?* (1) Attestations must be submitted, by U.S. mail, private carrier, or facsimile transmission to the U.S. Department of Labor ETA Regional Office(s) which are designated by the Chief, Division of Foreign Labor Certifications, USES. Attestations must be received and date-stamped by DOL at least 14 calendar days prior to the date of the first performance of the intended longshore activity, and shall be accepted for filing or returned by ETA in accordance with paragraph (g) of this section within 14 calendar days of the date received by ETA. An attestation which is accepted by ETA solely because it was not reviewed within 14 days is subject to subsequent invalidation pursuant to paragraph (i) of this section. Every employer filing an attestation shall have an agent or representative with a United States address. Such address shall be clearly indicated on the Form ETA 9033. In order to ensure that an attestation has been accepted for filing prior to the date of the performance of the longshore activity, employers are advised to take mailing time into account to make sure that ETA receives the attestation at least 14 days prior to the first performance of the longshore activity.

(2) *Unanticipated Emergencies.* ETA may accept for filing attestations received after the 14-day deadline when due to an unanticipated emergency, as defined in § ____.502 of this part. When an employer is claiming an unanticipated emergency, it shall submit documentation to support such a claim. ETA shall then make a determination on the validity of the claim, and shall accept the attestation for filing or return it in accordance with paragraph (g) of this section. ETA shall in no case accept an attestation received later than the date of the first performance of the activity.

(c) *What should be submitted?* (1) *Form ETA 9033 with accompanying documentation.* For each port, a completed and dated original Form ETA 9033, containing the required attestation elements and the original signature of the employer (or the employer's designated agent or representative), shall be submitted, along with two copies of the completed, signed, and dated Form ETA 9033. (Copies of Form ETA 9033 will be available at all Department of Labor ETA Regional Offices and at the National Office). In addition, the employer shall submit facts and evidence to show compliance with each of the attestation elements as prescribed by the regulatory standards in paragraphs (d) through (f) of this section. In the case of an investigation pursuant to subpart G of this part, the employer shall have the burden of proof to establish the validity of each attestation. The employer shall maintain in its records at the office of its U.S. agent, for a period of at least 3 years from the date of filing, sufficient documentation to meet its burden of proof and shall make the documents available to Department of Labor officials upon request. Whenever any document is submitted to a Federal agency or retained in the employer's records pursuant to this part, the document either shall be in the English language or shall be accompanied by a written translation into the English language certified by the translator as to the accuracy of the translation and his/her competency to translate.

(2) *Attestation elements.* The attestation elements referenced in paragraph (c)(1) of this section are mandated by section 258 (c)(1)(B) of the Act (8 U.S.C. 1288(c)(1)(B)). Section 258(c)(1)(B) of the Act requires employers who seek to have alien crewmembers engage in a longshore activity to attest as follows:

(i) The performance of the activity by alien crewmembers is permitted under the prevailing practice of the particular port as of the date of filing of the attestation;

(ii) The use of the alien crewmembers for such activity is not during a strike or lockout in the course of a labor dispute, and is not intended or designed to influence an election of a bargaining representative for workers in the local port; and

(iii) Notice of the attestation has been provided by the owner, agent, consignee, master, or commanding officer to the bargaining representative of longshore workers in the local port, or, where there is no such bargaining representative, notice has been provided to longshore workers employed at the local port.

(d) *The first attestation element: Prevailing practice.* For an employer to be in compliance with the first attestation element, it is required to have been the prevailing practice during the 12-month period preceding the filing of the attestation, for a particular activity of longshore work at the particular port to be performed by alien crewmembers. For each port, a prevailing practice can be established for each of four different activities of longshore work: Loading of cargo, unloading of cargo, operation of cargo-related equipment, or handling of mooring lines. It is thus possible that at a particular port it is the prevailing practice for alien crewmembers to unload vessels but not the prevailing practice to load them. An employer shall indicate on the attestation which of the four activities it is claiming is the

prevailing practice to be performed by alien crewmembers.

(1) *Establishing a prevailing practice.* In establishing that particular activity of longshore work is the prevailing practice at a particular port, an employer shall submit facts and evidence to show that in the 12-month period preceding the filing of the attestation, one of the following conditions existed:

(i) Over fifty percent of vessels docking at the port used alien crewmembers for the activity (for purposes of this subparagraph, a vessel shall be counted each time it docks at the particular port);

(ii) Alien crewmembers made up over fifty percent of the workers in the port who engaged in the activity; or

(iii) In the case of loading or unloading cargo, over fifty percent of the cargo in the port (measured in tonnage) was loaded or unloaded, respectively, by alien crewmembers.

Performance of the activity with the use of an automated self-unloading conveyor belt or vacuum-actuated system on a vessel shall not be included.

(2) *Documentation.* In assembling the facts and evidence required by paragraph (d)(1) of this section, the employer may consult with the port authority which has jurisdiction over the local port, the collective bargaining representative(s) of longshore workers at the local port, other employers, or any other entity which is familiar with the practices at the port. Such documentation shall include a written summary of a survey of the experience of shipmasters who entered the local port in the previous year; or a letter, affidavit, or other written statement from an appropriate local port authority regarding the use of alien crewmembers to perform the longshore activity at the port in the previous year; or other documentation of comparable weight. Written statements from collective bargaining representatives and/or shipping agents with direct knowledge of practices regarding the use of alien crewmembers in the local port may also be pertinent. Such documentation shall accompany the Form ETA 9033, and any underlying documentation which supports the employer's burden of proof shall be maintained in the employer's records at the office of the U.S. agent as required by paragraph (c)(1) of this section.

(e) *The second attestation element: No strike or lockout; no intention or design to influence bargaining representative election.* (1) The employer shall attest that, at the time of submitting the attestation, there is not a strike or lockout in the course of a labor dispute covering the employer's activity, and that it will not use alien crewmembers during a strike or lockout after filing the attestation. The employer shall also attest that the employment of such aliens is not intended or designed to influence an election for a bargaining representative for workers in the local port. Labor disputes for purposes of this attestation element relate only to those involving longshore workers at the port of intended employment. This attestation element applies to strikes and lockouts and elections of bargaining representatives at the local port where the use of alien crewmembers for longshore workers is intended.

(2) *Documentation.* As documentation to substantiate the requirement in paragraph (e)(1) of this section, an employer may submit a statement of the good faith efforts made to determine whether there is a strike or lockout at the particular port, as, for example, by contacting the port authority or the collective bargaining representatives for longshore workers at the particular port.

(f) *The third attestation element: Notice of filing.* The employer of alien crewmembers shall attest that at the time of filing the attestation, notice of filing has been provided to the bargaining representatives of the longshore workers in the local port, or, where there is no such bargaining representatives, notice of the filing has been provided to longshore workers employed at the local port through posting in conspicuous locations and through other appropriate means.

(1) *Notification of bargaining representative.* No later than the date attestation is received by DOL to be considered for filing, the employer of alien crewmembers shall notify the bargaining representative (if any) of longshore workers at the local port that the attestation is being submitted to DOL. The notice shall include a copy of the Form ETA 9033, shall state the activity(ies) for which the attestation is submitted, and shall state in that notice that the attestation is submitted, and shall state in that notice that the attestation and accompany documentation are available at the national office of ETA for review by interested parties. The employer may have its owner, agent, consignee, master, or commanding officer provide such notice. Notices under this paragraph (f)(1) shall include the following statement: "Complaints alleging misrepresentative of material facts in the attestation and/or failure to comply with the terms of the attestation may be filed with any office of the Wage and Hour Division of the United States Department of Labor."

(2) *Posting notice where there is no bargaining representative.* If there is no bargaining representative of longshore workers at the local port when the employer submits an attestation to ETA, the employer shall provide written notice to the port authority for distribution to the public on request. In addition, the employer shall post one or more written notices at the local port, stating that the attestation with accompanying documentation has been submitted, the activity(ies) for which the attestation has been submitted, and that the attestation and accompanying documentation are available at the national office of ETA for review by interested parties. Such posted notice shall be clearly visible and unobstructed, and shall be posted in conspicuous places where the longshore workers readily can read the posted notice on the way to or from their duties. Appropriate locations for posting such notices include locations in the immediate proximity of mandatory Fair Labor Standards Act wage and hour notices and Occupational Safety and Health Act occupational safety and health notices. The notice shall include a copy of the Form ETA 9033 filed with DOL, shall provide information concerning the availability of supporting documents for examination at the national office of ETA, and shall include the following statement: "Complaints alleging misrepresentation of material facts in the attestation and/or failure to comply with the terms of the attestation may be filed with any office of the Wage and Hour Division of the United States Department of Labor."

(3) *Documentation.* The employer shall provide a statement setting forth the name and address of the person to whom the notice was provided and where and when the notice was posted and shall attach a copy of the notice.

(g) *Actions on attestations submitted for filing.* Once an attestation has been received from an employer, a determination shall be made by the regional Certifying Officer whether to accept the attestation for filing or return it. The regional Certifying Officer may request additional explanation and/or documentation from the employer in making this determination. An attestation which is properly filled out and which includes accompanying documentation for each of the requirements set forth at § ____.510 (d) through (f) shall be accepted for filing by ETA on the date it is signed by the regional Certifying Officer unless it falls within one of the categories set forth in paragraph (g)(2) of this section. Once an attestation is accepted for filing, ETA

shall then follow the procedures set forth in paragraph (g)(1) of this section. Upon acceptance of the employer's attestation by ETA, the attestation and accompanying documentation will be forwarded and shall be available in a timely manner for public examination at the ETA national office. ETA shall not consider information contesting an attestation received by ETA prior to the determination to accept or return the attestation for filing. Such information shall not be made part of ETA's administrative record on the attestation, but shall be referred to ESA to be processed as a complaint pursuant to subpart G of this part if the attestation is accepted by ETA for filing.

(1) *Acceptance* (i) If the attestation is properly filled out and includes accompanying documentation for each of the requirements at § ____.510 (d) through (f) of this subpart, and does not fall within one of the categories set forth at paragraph (g)(2) of this section, ETA shall accept the attestation for filing, notify the Attorney General in writing of the filing, and return to the employer, or the employer's agent or representative at a U.S. address, one copy of the attestation form submitted by the employer, with ETA's acceptance indicated thereon. The employer may then use alien crewmembers for the particular activity of longshore work at the U.S. port cited in the attestation in accordance with INS regulations.

(ii) DOL is not the guarantor of the accuracy, truthfulness or adequacy of an attestation accepted for filing.

(2) *Unacceptable Attestations.* ETA shall not accept an attestation for filing and shall return such attestation to the employer, or the employer's agent or representative at a U.S. address, when one of the following conditions exists:

(i) When the Form ETA 9033 is not properly filled out. Examples of improperly filled out Form ETA 9033's include instances where the employer has neglected to check all the necessary boxes, or where the employer has failed to include the name of the port where it intends to use the alien crewmembers for longshore work, or when the employer has failed to sign the attestation or to designate an agent in the United States;

(ii) When the Form ETA 9033 with accompanying documentation is not received by ETA at least 14 days prior to the date of performance of the first activity indicated on the Form ETA 9033; unless the employer is claiming an unanticipated emergency, has included documentation which supports such claim, and ETA has found the claim to be valid;

(iii) When the Form ETA 9033 does not include accompanying documentation for each of the requirements set forth at § ____.510(d) through (f);

(iv) When the accompanying documentation required by paragraph (c) of this section submitted by the employer, on its face, is inconsistent with the requirements set forth at § ____.510(d) through (f). Examples of such a situation include instances where the Form ETA 9033 pertains to one port and the accompanying documentation to another; where the Form ETA 9033 pertains to one activity of longshore work and the accompanying documentation obviously refers to another; or where the documentation clearly indicates that only thirty percent, instead of the required fifty percent, of the activity attested to is performed by alien crewmembers;

(v) When the Administrator, Wage and Hour Division, has notified ETA, in writing, after an investigation pursuant to subpart G of this part, that the particular activity of longshore work which the employer has attested is the prevailing practice at a particular port, is not, in fact, the prevailing practice at the particular port;

(vi) When the Administrator, Wage and Hour Division, has notified ETA, in writing, that a cease and desist order has been issued pursuant to subpart G of this part, with respect to the attesting employer's performance of the particular activity and port, in violation of a previously accepted attestation;

(vii) When the Administrator, Wage and Hour Division, has notified ETA, in writing, after an investigation pursuant to subpart G of this part, that the particular employer has misrepresented or failed to comply with an attestation previously submitted and accepted for filing, but in no case for a period of more than one year after the date of the Administrator's notice and provided that INS has not advised ETA that the prohibition is in effect for a lesser period; or

(viii) When the employer had failed to comply with any penalty, sanction, or other remedy assessed in a final agency action following an investigation by the Wage and Hour Division pursuant to subpart G of this part and the Administrator, Wage and Hour Division has notified ETA, in writing.

(3) *Resubmission.* If the attestation is not accepted for filing pursuant to the categories set forth in paragraph (g)(2) of this section, ETA shall return to the employer, or the employer's agent or representative, at a U.S. address, the attestation form and accompanying documentation submitted by the employer. ETA shall notify the employer, in writing, of the reason(s) that the attestation is unacceptable. When an attestation is found to be unacceptable pursuant to paragraphs (g)(2)(i) through (iv) of this section, the employer may resubmit the attestation with the proper documentation. When an attestation is found to be unacceptable pursuant to paragraphs (g)(2)(v) through (viii) of this section and returned, such action shall be the final decision of the Secretary of Labor.

(h) *Effective date and validity of filed attestations.* An attestation is filed and effective as of the date it is accepted and signed by the regional Certifying Officer. Such attestation is valid for the 12-month period beginning on the date of acceptance for filing, unless suspended or invalidated pursuant to subpart G of this part or paragraph (i) of this section. The filed attestation expires at the end of the 12-month period of validity.

(i) *Suspension or invalidation of filed attestations.* Suspension or invalidation of an attestation may result from enforcement action(s) under subpart G of this part (i.e., investigation(s) conducted by the Administrator or cease and desist order(s) issued by the Administrator regarding the employer's misrepresentation in or failure to carry out its attestation); or from a discovery by ETA that it made an error in accepting the attestation because such attestation falls within one of the categories set forth in paragraph (g)(2) of this section.

(1) *Result of Wage and Hour Division action.* Upon the determination of a violation under subpart G of this part, the Administrator shall, pursuant to § ____.660(b), notify the Attorney General of the violation and of the Administrator's notice to ETA.

(2) *Result of ETA action.* If, after accepting an attestation for filing, ETA finds that the attestation is unacceptable because it falls within one of the categories set forth at paragraph (g)(2) of this section, and as a result, ETA suspends or invalidates the attestation, ETA shall notify the Attorney General of such suspension or invalidation and shall return a copy of the attestation form to the employer, or the employer's agent or representative, at a U.S. address. ETA shall notify the employer, in writing, of the reason(s) that the attestation is suspended or invalidated. When an attestation is found to be suspended or invalidated pursuant to paragraphs (g)(2)(i) through (iv) of this section, the employer may resubmit the attestation with the proper documentation. When an attestation is

suspended or invalidated because it falls within one of the categories in paragraphs (g)(2)(v) through (viii) of this section, such action shall be the final decision of the Secretary of Labor, except as set forth in subpart G of this part.

(j) *Withdrawal of accepted attestations.* (1) An employer who has submitted an attestation which has been accepted for filing may withdraw such attestation at any time before the 12-month period of its validity terminates, unless the Administrator has found reasonable cause under subpart G to commence an investigation of the particular attestation. Such withdrawal may be advisable, for example, when the employer learns that the particular activity(ies) of longshore work which it has attested is the prevailing practice to perform with alien crewmembers may not, in fact, have been the prevailing practice at the particular port at the time of filing. Requests for such withdrawals shall be in writing and shall be directed to the regional Certifying Officer.

(2) Withdrawal of an attestation shall not affect and employer's liability with respect to any failure to meet the conditions attested to which took place before the withdrawal, or for misrepresentations in an attestation. However, if an employer has not yet performed the particular longshore activity(ies) at the port in question, the Administrator will not find reasonable cause to investigate unless it is alleged, and there is reasonable cause to believe, that the employer has made misrepresentations in the attestation or documentation thereof, or that the employer has not in fact given the notice attested to.

§ ____.520 Special provisions regarding automated vessels.

In general, an attestation is not required in the case of a particular activity of longshore work consisting of the use of automated self-unloading conveyor belt or vacuum-actuated systems on a vessel. Such longshore work with such equipment shall be exempt from the attestation requirement only if the particular activity of longshore work consists of using that equipment. If the automated equipment is not used in the particular activity of longshore work, an attestation is required as described under § ____.510 of this part. When the automated equipment is used in the particular activity of longshore work, an attestation is required only if the Administrator finds, based on a preponderance of the evidence which may be submitted by any interested party, that the performance of the particular activity is not the prevailing practice at the port, or was during a strike or lockout or intended to influence an election of a bargaining representative for workers in the local port, or if the Administrator issues a cease and desist order against use of the automated equipment without such attestation.

(a) *Procedure when attestation is required.* If it is determined pursuant to subpart G of this part that an attestation is required for longshore work consisting of the use of automated equipment, the employer shall comply with all the requirements set forth at § ____.510 of this part except paragraph (d) of § ____.510. In lieu of complying with § ____.510(d) of this part, the employer shall comply with paragraph (b) of this section.

(b) *The first attestation element: Prevailing practice for automated vessels.* For an employer to be in compliance with the first attestation element, it is required to have been the prevailing practice that over fifty percent (as described in paragraph (b)(1) of this section) of a particular activity of longshore work which was performed through the use of automated self-unloading conveyor belt or vaccum-actuated equipment at the particular port during the 12-month period preceding the filing of the attestation, was performed by alien crewmembers.

(1) *Establishing a prevailing practice.* In establishing that use of alien crewmembers to perform a particular activity of longshore work consisting of the use of self-unloading conveyor belt or vacuum-actuated systems on a vessel is the prevailing practice at a particular port, an employer shall submit facts and evidence to show that in the 12-month period preceding the filing of the attestation, one of the following conditions existed:

(i) Over fifty percent of the automated vessels docking at the port used alien crewmembers for the activity (for purposes of this paragraph (b)(1), a vessel shall be counted each time it docks at the particular port);

(ii) Alien crewmembers made up over fifty percent of the workers who performed the activity with respect to such automated vessels; or

(iii) Over fifty percent of the cargo (measured in tonnage) of such automated vessels was loaded or unloaded through the use of such equipment operated by alien crewmembers.

(2) *Documentation.* In assembling the documentation described in paragraph (b)(1) of this section, the employer may consult with the port authority which has jurisdiction over the local port, the collective bargaining representative(s) of longshore workers at the local port, other employers, or any other entity which is familiar with the practices at the port. The documentation shall include a written summary of a survey of the experience of shipmasters who entered the local port in the previous year; or a letter, affidavit, or other written statement from an appropriate local port authority regarding the use of alien crewmembers to perform the longshore activity at the part in the previous year; or other documentation of comparable weight. Written statements from collective bargaining representatives and/or shipping agents with direct knowledge of practices regarding the use of alien crewmembers may also be pertinant. Such documentation shall accompany the Form ETA 9033, and any underlying documentation which supports the employer's burden of proof shall be maintained in the employer's records at the office of the U.S. agent as required under § ____.510(c)(1) of this part.

§ ____.550 Public access.

(a) *Public examination at ETA.* ETA shall make available for public examination in Washington, DC, a list of employers which have filed attestations, and for each such employer, a copy of the employer's attestation and accompanying documentation it has received.

(b) *Notice to public.* ETA periodically shall publish a list in the **Federal Register** identifying employers which have submitted attestations; employers which have attestations on file; and employers which have submitted attestations which have been found unacceptable for filing.

Subpart G—Enforcement of the Limitations Imposed on Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

§ ____.600 Enforcement authority of Administrator, Wage and Hour Division.

(a) The Administrator shall perform all the Secretary's investigative and enforcement functions under section 258 of the INA (8 U.S.C. 1288) and subparts F and G of this part.

(b) The Administrator, pursuant to a complaint, shall conduct such investigations as may be appropriate and, in connection therewith, enter and inspect such places and such records (and make transcriptions or copies thereof), question such persons and gather such information as deemed necessary by the Administrator to

determine compliance regarding the matters which are the subject of the investigation.

(c) An employer being investigated shall make available to the Administrator such records, information, persons, and places as the Administrator deems appropriate to copy, transcribe, question, or inspect. No employer subject to the provisions of section 258 of the INA (8 U.S.C. 1288) and subparts F and G of this part shall interfere with any official of the Department of Labor performing an investigation, inspection or law enforcement function pursuant to 8 U.S.C. 1288 or subpart F or G of this part. Any such interference shall be a violation of the attestation and subparts F and G of this part, and the Administrator may take such further actions as the Administrator considers appropriate.

(Note: Federal criminal statutes prohibit certain interference with a Federal officer in the performance of official duties. 18 U.S.C. 111 and 18 U.S.C. 1114.)

(d) An employer subject to subparts F and G of this part shall at all times cooperate in administrative and enforcement proceedings. No employer shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any person because such person has:

(1) Filed a complaint or appeal under or related to section 258 of the INA (8 U.S.C. 1288) or subpart F or G of this part;

(2) Testified or is about to testify in any proceeding under or related to section 258 of the INA (8 U.S.C. 1288) or subpart F or G of this part;

(3) Exercised or asserted on behalf of himself or herself or others any right or protection afforded by section 258 of the INA (8 U.S.C. 1288) or subpart F or G of this part.

(4) Consulted with an employee of a legal assistance program or an attorney on matters related to Section 258 of the Act or to subpart F or G of this part or any other DOL regulation promulgated pursuant to 8 U.S.C. 1288.

In the event of such intimidation or restraint as are described in this section, the conduct shall be a violation of the attestation and these regulations, and the Administrator may take such further actions as the Administrator considers appropriate.

(e) The Administrator shall, to the extent possible under existing law, protect the confidentiality of any person who provides information to the Department in confidence in the course of an investigation or otherwise under subpart F or G of this part. However, confidentiality will not be afforded to the complainant or to information provided by the complainant.

§ ____.605 Complaints and investigative procedures.

(a) The Administrator, through an investigation, shall determine whether a basis exists to make a finding that:

(1) An attesting employer has—

(i) Failed to meet conditions attested to; or

(ii) Misrepresented a material fact in an attestation.

(Note: Federal criminal statutes provide penalties of up to $10,000 and/or imprisonment of up to 5 years for knowing and willful submission of false statements to the Federal Government. 18 U.S.C. 1001; see also 18 U.S.C. 1546.);

or

(2) In the case of an employer operating under the automated vessel exception to the requirement for filing an attestation, the employer—

(i) Is utilizing alien crewmember(s) to perform longshore activities at a port where the prevailing practice has not been to use such workers for such activities; or

(ii) Is utilizing alien crewmember(s) to perform longshore activities:

(A) During a strike or lockout in the course of a labor dispute at the U.S. port, and/or

(B) With intent or design to influence an election of a bargaining representative for workers at the U.S. port; or

(3) An employer failed to comply in any other manner with the provisions of subpart F or G of this part.

(b) Any aggrieved person or organization may file a complaint of a violation of the provisions of subpart F or G of this part. No particular form of complaint is required, except that the complaint shall be written or, if oral, shall be reduced to writing by the Wage and Hour Division official who receives the complaint. The complaint shall set forth sufficient facts for the Administrator to determine whether there is reasonable cause to believe that particular part or parts of the attestation or regulations have been violated or that conditions exist that would require the employer to file an attestation under the automated vessel exception to the requirement for filing an attestation. The complaint may be submitted to any local Wage and Hour Division office; the addresses of such offices are found in local telephone directories. The office or person receiving such a complaint shall refer it to the office of the Wage and Hour Division administering the area in which the reported violation is alleged to have occurred.

(c) The Administrator shall determine whether there is reasonable cause to believe that the complaint warrants investigation. If the Administration determines that the complaint fails to present reasonable cause for an investigation, the Administrator shall so notify the complainant, who may submit a ne complaint, with such additional information as may be necessary. There shall be no hearing pursuant to § ____.625 for the Administrator's determination not to conduct an investigation. If the Administrator determines that an investigation on the complaint is warranted, the investigation shall be conducted and a determination issued within 180 calendar days of the Administrator's receipt of the complaint, or later for good cause shown.

(d) In conducting an investigation, the Administrator may consider and make part of the investigation file any evidence or materials that have been compiled in any previous investigation regarding the same or a closely related matter.

(e) In conducting an investigation, the Administrator shall take into consideration the employer's burden to provide facts and evidence to establish the matters asserted (see §§ ____.510(c)(1) and ____.640(e) of this part.)

(f) In an investigation regarding the use of alien crewmembers to perform longshore activity(ies) in a U.S. port (whether by an attesting employer or by an employer claiming the automated vessel exception), the Administrator shall accept as conclusive proof a previous Departmental determination, published in the **Federal Register** pursuant to § ____.665, establishing that such use of alien crewmembers is not the prevailing practice for the activity(ies) and U.S. port at issue. The Administrator shall give appropriate weight to a previous Departmental determination published in the **Federal Register** pursuant to § ____.665, establishing that at the time of such determination, such use of alien crewmembers was the prevailing practice for the activity(ies) and U.S. port at issue.

(g) When an investigation has been conducted, the Administor shall, within the time period specified in paragraph (c) of this section, issue a written determination as to whether a basis exists to make a finding stated in paragraph (a) of this section. The determination shall be issued and an opportunity for a hearing shall be afforded in accordance with the

procedures specified in § ____.620(d) of this part.

§ ____.610 Cease and desist order.

(a) If the Administrator determines that reasonable cause exists to conduct an investigation with respect to an attestation, the complainant may request that the Administrator enter a cease and desist order against the employer against whom the complaint is lodged.

(1) The request for a cease and desist order may be filed along with the complaint, or may be filed subsequently. The request, including all accompanying documents, shall be filed in duplicate with the same Wage and Hour Division office that received the complaint.

(2) No particular form is prescribed for a request for a cease and desist order pursuant to this paragraph (a). However, any such request shall:

(i) Be dated;

(ii) Be typewritten or legibly written;

(iii) Specify the attestation provisions(s) with respect to which the employer allegedly failed to comply and/or submitted misrepresentation(s) of material fact(s);

(iv) Be accompanied by evidence to substantiate the allegation(s) of noncompliance and/or misrepresentation;

(v) Be signed by the complaining party making the request or by the authorized representative of such party;

(vi) Include the address at which such complaining party or authorized representative desires to receive further communications relating thereto.

(3) Upon receipt of a request for a cease and desist order, the Administrator shall promptly notify the employer of the request. The Administrator's notice shall:

(i) Inform the employer that it may respond to the request and meet with a Wage and Hour Division official within 14 calendar days of the date of the notice;

(ii) Be served upon the employer by facsimile transmission, in person, or by certified or regular mail, at the address of the U.S. agent stated on the employer's attestation;

(iii) Be accompanied by copies of the complaint, the request for a cease and desist order, the evidence submitted by the complainant, and any evidence from other investigation(s) of the same or a closely related matter which the Administrator may incorporate into the record.

(4) No particular form is prescribed for the employer's response to the complaining party's request for a cease and desist order under this paragraph (a). However, any such response shall:

(i) Be dated;

(ii) Be submitted by facsimile transmission, in person, by certified or regular mail, or by courier service to the Wage and Hour Division office which issued the notice of the request;

(iii) Be received by the appropriate Wage and Hour Division office no later than 14 calendar days from the date of the notice of the request;

(iv) Be typewritten or legibly written;

(v) Explain, in any detail desired by the employer, the employer's grounds or reasons as to why the Administrator should deny the requested cease and desist order;

(vi) Be accompanied by evidence to substantiate the employer's grounds or reasons as to why the Administrator should deny the requested cease and desist order;

(vii) Specify whether the employer desires an informal meeting with a Wage and Hour Division official;

(viii) Be signed by the employer or its authorized representative;

(ix) Include the address at which the employer or its authorized representative desires to receive further communications relating thereto, if such address is different from the address of the U.S. agency stated on the attestation.

(5) In the event the employer requests a meeting with a Wage and Hour Division official, the Administrator shall provide the employer and the complaining party, or their authorized representatives, an opportunity for such a meeting to present their views regarding the evidence and arguments submitted by the parties. This shall be an informal meeting, not subject to any procedural rules. The meeting shall be held within the 14 calendar days permitted for the employer's response to the request for the cease and desist order, and shall be held at a time and place set by the Wage and Hour Division official, who shall notify the parties.

(6) After receipt of the employer's timely response and after any formal meeting which may have been held with the parties, the Administrator shall promptly issue a written determination, either denying the request or issuing a cease and desist order. In making the determination, the Administrator shall consider all the evidence submitted, including any evidence from the same or a closely related matter which the Administrator has incorporated into the record and provided to the employer. If the Administrator determines that the complaining party's position is supported by a preponderance of the evidence submitted, the Administrator shall order that the employer cease the activities specified in the determination, until the completion of the Administrator's investigation and any subsequent proceedings pursuant to § ____.625 of this part, unless the prohibition is lifted by subsequent order of the Administrator because it is later determined that the employer's position was correct. While the cease and desist order is in effect, ETA shall suspend the subject attestation and shall not accept any subsequent attestation from the employer for the activity(ies) and U.S. port at issue.

(7) The Administrator's cease and desist order shall be served on the employer at the address of its designated U.S. based representative or at the address specified in the employer's response, by facsimile transmission, personal service, or certified mail.

(b) If the Administrator determines that reasonable cause exists to conduct an investigation with respect to a complaint that a non-attesting employer is not entitled to the automated vessel exception to the requirement for the filing of an attestation, a complaining party may request that the Administrator enter a cease and desist order against the employer against whom the complaint is lodged.

(1) The request for a cease and desist order may be filed along with the complaint, or may be filed subsequently. The request, including all accompanying documents, shall be filed in duplicate with the same Wage and Hour Division office that received the complaint.

(2) No particular form is prescribed for a request for a cease and desist order pursuant to thhis paragraph. However, any such request shall:

(i) Be dated;

(ii) Be typewritten or legibly written;

(iii) Specify the circumstances which allegedly require that the employer be denied the use of the automated vessel exception;

(iv) Be accompanied by evidence to substantiate the allegation(s);

(v) Be signed by the complaining party making the request or by the authorized representative of such party;

(vi) Include the address at which such complaining party or authorized representative desires to receive further communications relating thereto.

(3) Upon receipt of a request for a cease and desist order, the Administrator shall notify the employer of the request. The Administrator's notice shall:

(i) Inform the employer that it may respond to the request and meet with a Wage and Hour Division official within

14 calendar days of the date of the notice;

(ii) Be served upon the employer by facsimile transmission, in person, or by certified or regular mail, at the employer's last known address.

(iii) Be accompanied by copies of the complaint, the request for a cease and desist order, the evidence submitted by the complainant, and any evidence from other investigation(s) of the same or a closely related matter which the Administrator may incorporate into the record.

(4) No particular form is prescribed for the employer's response to the complaining party's request for a cease ad desist order under this paragraph (b). However, any such response shall:

(i) Be dated;

(ii) Be submitted by facsimile transmission, in person, by certified or regular mail, or by courier service to the Wage and Hour Division office which issued the notice of the request;

(iii) Be received by the appropriate Wage and Hour Division office no later than 14 calendar days from the date of the notice of the request;

(iv) Be typewritten or legibly written;

(v) Explain, in any detail desired by the employer, the employer's grounds or reasons as to why the Administrator should deny the requested cease and desist order;

(vi) Be accompanied by evidence to substantiate the employer's grounds or reasons as to why the Administrator should deny the requested cease and desist order;

(vii) Specify whether the employer desires an informal meeting with a Wage and Hour Division official;

(viii) Be signed by the employer or its authorized representative;

(ix) Include the address at which the employer or its authorized representative desires to receive further communications relating thereto.

(5) In the event the employer requests a meeting with a Wage and Hour Division official, the Administrator shall provide the employer and the complaining party, or their authorized representatives, an opportunity for such a meeting to present their views regarding the evidence and arguments submitted by the parties. This shall be an informal meeting, not subject to any procedural rules. The meeting shall be held within the 14 calendar days permitted for the employer's response to the request for the cease and desist order, and shall be held at a time and place set by the Wage and Hour Division official, who shall notify the parties.

(6) After receipt of the employer's timely response and after any informal meeting which may have been held with the parties, the Administrator shall promptly issue a written determination, either denying the request or issuing a cease and desist order. If the Administrator determines that the complaining party's position is supported by a preponderance of the evidence submitted, the Administrator shall order that the employer cease the use of alien crewmembers to perform the longshore activity(ies) specified in the order. In making the determination, the Administrator shall consider all the evidence submitted, including any evidence from the same or a closely realted matter which the Administrator has incorporated into the record and provided to the employer. The order shall remain in effect until the completion of the investigation and any subsequent hearing proceedings pursuant to § ____.625 of this part, unless the employer files and maintains on file with ETA an attestation pursuant to § ____.520 of this part or unless the prohibition is lifted by subsequent order of the Administrator because it is later determined that the employer's position was correct.

(7) The Administrator's cease and desist order shall be served on the employer or its designated representative by facsimile transmission, personal service, or by certified mail at the address specified in the employer's response or, if no such address was specified, at the employer's last known address.

§ ____.615 Civil money penalties and other remedies.

(a) The Administrator may assess a civil money penalty not to exceed $5,000 for each alien crewmember with respect to whom there has been a violation of the attestation or subpart F or G of this part. The Administrator may also impose appropiate remedy(ies).

(b) In determining the amount of civil money penalty to be assessed, the Administrator shall consider the type of violation committed and other relevant factors. The factors which may be considered include, but are not limited to, the following:

(1) Previous history of violation, or violations, by the employer under the Act and subpart F or G of this part;

(2) The number of workers affected by the violation or violations;

(3) The gravity of the violation or violations;

(4) Efforts made by the violator in good faith to comply with the provisions of 8 U.S.C. ____ and subparts F and G of this part;

(5) The violator's explanation of the violation or violations;

(6) The violator's commitment to future compliance; and

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss, potential injury or adverse effect with respect to other parties.

(c) The civil money penalty, and any other remedy determined by the Administrator to be appropriate, are immediately due for payment or performance upon the assessement by the Administrator, or the decision by an administrative law judge where a hearing is requested, or the decision by the Secretary where review is granted. The employer shall remit the amount of the civil money penalty, by certified check or money order made payable to the order of "Wage and Hour Division, Labor." The remittance shall be delivered or mailed to the Wage and Hour Division office for the area in which the violations occurred. The performance of any other remedy prescribed by the Administrator shall follow procedures established by the Administrator. The employer's failure to pay the civil money penalty, or to perform any other remedy prescribed by the Administrator, shall result in the rejection by ETA of any future attestation submitted by the employer, until such payment or performance is accomplished.

§ ____.620 Written notice, service and Federal Register publication of Administrator's determination.

(a) The Administrator's determination, issued pursuant to § ____.605 of this part, shall be served on the complainant, the employer, and other known interested parties by personal service or by certified mail at the parties' last known addresses. Where service by certified mail is not accepted by the party, the Administrator may exercise discretion to serve the determination by regular mail.

(b) Where the Administrator determines the prevailing practice regarding the use of alien crewmember(s) to perform longshore activity(ies) in a U.S. port (whether the Administrator's investigation involves an employer operating under an attestation, or under the automated vessel exception), the Administrator shall, simultaneously with issuance of the determination, publish in the **Federal Register** a notice of the determination. The notice shall identify the activity(ies), the U.S. port, and the prevailing practice regarding the use of alien crewmembers. The notice shall also inform interested parties that they may request a hearing pursuant to

§ ____.625 of this part, within 15 days of the date of the determination.

(c) The Administrator shall file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the complaint and the Administrator's determination.

(d) The Administrator's written determination required by § ____.605 of this part shall:

(1) Set forth the determination of the Administrator and the reason or reasons therefor, and in the case of a finding of violation(s) by an attesting employer, prescribe any remedies, including the amount of any civil money penalties assessed and the reason therefor, and/or any other remedies required for compliance with the employer's attestation.

(2) Inform the interested parties that they may request a hearing pursuant to § ____.620 of this part.

(3) Inform the interested parties that in the absence of a timely request for a hearing, received by the Chief Administrative Law Judge within 15 calendar days of the date of the determination, the determination of the Administrator shall become final and not appealable.

(4) Set forth the procedure for requesting a hearing, and give the address of the Chief Administrative Law Judge.

(5) Inform the parties that, pursuant to § ____.660, the Administrtor shall notify ETA and the Attorney General of the occurrence of a violation by the attesting employer or of the non-attesting employer's ineligibility for the automated vessel exception to the requirement for filing of an attestation.

§ ____.625 Request for hearing.

(a) Any interested party desiring to request an administrative hearing on a determination issued pursuant to §§ ____.605 and ____.620 of this part shall make such request in writing to the Chief Administrative Law Judge at the address stated in the notice of determination.

(b) Interested parties may request a hearing in the following circumstances:

(1) The complainant or any other interested party may request a hearing where the Administrator determines, after investigation, that there is no basis for a finding that an attesting employer has committed violation(s) or that the employer is eligible for the automated vessel exception to the requirement for filing an attestation. In such a proceeding, the requesting party and the employer shall be parties; the Administrator may intervene as a party or appear as *amicus curiae* at any time in the proceeding, at the Administrator's discretion.

(2) The employer or any other interested party may request a hearing where the Administrator determines, after investigation, that there is a basis for a finding that an attesting employer has commited violation(s) or that the employer is not eligible for the automated vessel exception to the requirement for filing an attestation. In such a proceeding, the Administrator and the employer shall be parties.

(c) No particular form is prescribed for any request for hearing permitted by this section. However, any such request shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the notice of determination giving rise to such request;

(4) State the specific reason or reasons why the party requesting the hearing believes such determination is in error;

(5) Be signed by the party making the request or by an authorized representative of such party; and

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto.

(d) The request for such hearing must be received by the Chief Administrative Law Judge, at the address stated in the Administrator's notice of determination, no later than 15 calendar days after the date of the determination.

(e) The request may be filed in person, by facsimile transmission, by certified or regular mail, or by courier service. For the requesting party's protection, if the request is by mail, it should be by certified mail.

(f) Copies of the request for a hearing shall be sent by the requestor to the Administrator and all known interested parties.

§ ____.630 Rules of practice for administrative law judge proceedings.

(a) Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B) shall not apply, but principles designed to ensure production of relevant and probative evidence shall guide the admission of evidence. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

§ ____.635 Service and computation of time.

(a) Under this subpart, a party may serve any pleading or document by regular mail. Service on a party is complete upon mailing to the last known address or, in the case of the attesting employer, to the employer's designated represenative in the U.S. No additional time for filing or response is authorized where sevice is by mail. In the interest of expeditious proceedings, the administrative law judge may direct the parties to serve pleadings or documents by a method other than regular mail.

(b) Two (2) copies of all pleadings and other documents in any administrative law judge proceeding shall be served on the attorneys for the Administrator. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, and one copy on the attorney representing the Administrator in the proceeding.

(c) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period includes the next business day.

§ ____.640 Administrative law judge proceedings.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § ____.625 of this part, the Chief Administrative Law Judge shall promptly appoint an administrative law judge to hear the case.

(b) Within seven calendar days following the assignment of the case, the administrative law judge shall notify all interested parties of the date, time and place of the hearing. All parties shall be given at least five calendar days notice of such hearing.

(c) The date of the hearing shall be not more than 60 calendar days from the date of the Administrator's determination. Because of the time constraints imposed by the Act, no requests for postponement shall be granted except for compelling reasons

and by consent of all the parties to the proceeding.

(d) The administrative law judge may prescribe a schedule by which the parties are permitted to file a prehearing brief or other written statement of fact of law. Any such brief or statement shall be served upon each other party in accordance with § ____.635 of this part. Posthearing briefs will not be permitted except at the request of the administrative law judge. When permitted, any such brief shall be limited to the issue or issues specified by the administrative law judge, shall be due within the time prescribed by the administrative law judge, and shall be served on each other party in accordance with § ____.635 of this part.

(e) In reaching a decision, the administrative law judge shall, in accordance with the Act, impose upon the employer the burden of producing facts and evidence to establish the matters required by the attestation or the automated vessel exception which is at issue.

(f) The administrative law judge proceeding shall not be an appeal or review of the Administrator's ruling on a request for a cease and desist order pursuant to § ____.610.

§ ____.645 Decision and order of administrative law judge.

(a) Within 90 calendar days after receipt of the transcript of the hearing, the administrative law judge shall issue a decision.

(b) The decision of the administrative law judge shall include a statement of findings and conclusions, with reasons and basis therefor, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator; the reason or reasons for such order shall be stated in the decision. The administrative law judge shall not render determinations as to the legality of a regulatory provision or the constitutionality of a statutory provision.

(c) The decision shall be served on all parties in person or by certified or regular mail.

§ ____.650 Secretary's review of administrative law judge's decision.

(a) The Administrator or any interested party desiring review of the decision and order of an administrative law judge shall petition the Secretary to review the decision and order. To be effective, such petition shall be received by the Secretary within 30 calendar days of the date of the decision and order. Copies of the petition shall be served on all parties and on the administrative law judge.

(b) No particualr form is prescribed for any petition for Secretary's review permitted by this subpart. However, any such petition shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the administrative law judge decision and order giving rise to such petition;

(4) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;

(5) Be signed by the party filing the petition or by an authorized representative of such party;

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and

(7) Attach copies of the administrative law judge's decision and order, and any other record documents which would assist the Secretary in determining whether review is warranted.

(c) Whenever the Secretary determines to review the decision and order of an administrative law judge, a notice of the Secretary's determination shall be served upon the administrative law judge and upon all parties to the proceeding within 30 calendar days after the Secretary's receipt of the petition for review.

(d) Upon receipt of the Secretary's notice, the Office of Administrative Law Judges shall within fifteen calendar days forward the complete hearing record to the Secretary.

(e) The Secretary's notice may specify:

(1) The issue or issues to be reviewed;

(2) The form in which submissions shall be made by the parties (e.g., briefs);

(3) The time within which such submissions shall be made.

(f) All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210, Attention: Executive Director, Office of Administrative Appeals, room S-4309. An original and two copies of all documents shall be filed. Documents are not deemed filed with the Secretary until actually received by the Secretary. All documents, including documents filed by mail, shall be received by the Secretary either or or before the due date.

(g) Copies of all documents filed with the Secretary shall be served upon all other parties involved in the proceeding. Service upon the Administrator shall be in accordance with § ____.635(b) or this part.

(h) The Secretary's final decision shall be issued within 180 calendar days from the date of the notice of intent to review. The Secretary's decision shall be served upon all parties and the administrative law judge.

(i) Upon issuance of the Secretary's decision, the Secretary shall transmit the entire record to the Chief Administrative Law Judge for custody pursuant to § ____.655 of this part.

§ ____.655 Administrative record.

The official record of every completed administrative hearing procedure provide by subparts F and G of this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge. Upon receipt of a complaint seeking review of the final agency action in a United States District Court, the Chief Administrative Law Judge shall certify the official record and shall transmit such record to the clerk of the court.

§ ____.660 Notice to the Attorney General and the Employment and Training Administration.

(a) The Administrator shall promptly notify the Attorney General and ETA of the entry of a cease and desist order pursuant to § ____.610 of this part. The order shall remain in effect until the completion of the Administrator's investigation and any subsequent proceedings pursuant to § ____.625 of this part, unless the Administrator notifies the Attorney General and ETA of the entry of a subsequent order lifting the prohibition.

(1) The Attorney General, upon receipt of notification from the Administrator that a cease and desist order has been entered against an employer:

(i) Shall not permit the vessel owned or chartered by the attesting employer to use alien crewmembers to perform the longshore activity(ies) at the port specified in the cease and desist order;

(ii) Shall, in the case of an employer seeking to utilize the automated vessel exception, require that such employer not use alien crewmembers to perform longshore activity(ies) at the port specified in the cease and desist order, without having on file with ETA an attestation pursuant to § ____.520 of this part.

(2) ETA, upon receipt of the Administrator's notice shall, in the case of an attesting employer, suspend the employer's attestation for the activity(ies) and port specified in the cease and desist order.

(b) The Administrator shall notify the Attorney General and ETA of the determination of a violation by an attesting employer or of the ineligibility of an employer for the automated vessel exception, upon the earliest of the following events:

(1) Where the Administrator determines that there is a basis for a finding of violation by an attesting employer or a finding of nonapplicability of the automated vessel exception, and no timely request for hearing is made pursuant to § ____.625 of this part;

(2) Where, after a hearing, the administrative law judge issues a decision and order finding a violation by an attesting employer or finding inapplicable the automated vessel exception; or

(3) Where the administrative law judge finds that there was no violation by an attesting employer or that the automated vessel exception does apply, and the Secretary, upon review, issues a decision pursuant to § ____.650 of this part, holding that a violation was committed by an attesting employer or holding that the automated vessel exception does not apply.

(c) The Attorney General, upon receipt of notification from the Administrator pursuant to paragraph (b) of this section:

(1) Shall not permit the vessels owned or chartered by the attesting employer to enter any port of the U.S. for a period of up to one year;

(2) Shall, in the case of an employer determined to be ineligible for the automated vessel exception, thereafter require that such employer not use alien crewmembers(s) to perform the longshore activity(ies) at the specified port without having on file with ETA an attestation pursuant to § ____.520 of this part;

(3) Shall, in the event that the Administrator's notice constitutes a conclusive determination (pursuant to § ____.665) that the prevailing practice at a particular U.S. port does not permit the use of nonimmigrant alien crewmembers for particular longshore activity(ies), thereafter permit no employer to use alien crewmembers for the particular longshore activity(ies) at that port.

(d) ETA, upon receipt of the Administrator's notice pursuant to paragraph (b) of this section:

(1) Shall, in the case of an attesting employer, suspend the employer's attestation for the port at issue and for any other U.S. port, and shall not accept for filing any attestation submitted by the employer for a period of 12 months or for a shorter period if such is specified for that employer by the Attorney General;

(2) Shall, if the Administrator's notice constitutes a conclusive determination (pursuant to § ____.665) that the prevailing practice at a particular U.S. port does not permit the use of alien crewmembers for the longshore activity(ies), thereafter accept no attestation from any employer for the performance of the activity(ies) at that port, and shall invalidate any current attestation for any employer for the performance of the activity(ies) at that port.

§ ____.665 Federal Register notice of determination of prevailing practices.

(a) Pursuant to § ____.620(b), the Administrator shall publish in the **Federal Register** a notice of the Administrator's determination of any investigation regarding the prevailing practice for the use of alien crewmembers for particular longshore activity(ies) in a particular U.S. port (whether under an attestation or under the automated vessel exception). Where the Administrator has determined that the prevailing practice in that U.S. port does not permit such use of alien crewmembers, and no timely request for a hearing is filed pursuant to § ____.625, the Administrator's determination shall be the conclusive determination for purposes of the Act and subparts F and G of this part; the Attorney General and ETA shall, upon notice from the Administrator, take the actions specified in § ____.660. Where the Administrator has determined that the prevailing practice in that U.S. port at the time of the investigation permits such use of alien crewmembers, the Administrator shall, in any subsequent investigation, give that determination appropriate weight, unless the determination is reversed in proceedings under §§ ____.625 or ____.650.

(b) Where an interested party, pursuant to § ____.625, requests a hearing on the Administrator's determination, the Administrator shall, upon the issuance of the decision of the administrative law judge, publish in the **Federal Register** a notice of the judge's decision as to the prevailing practice for the longshore activity(ies) and U.S. port at issue, if the Administrative Law Judge:

(1) Reversed the determination of the Administrator published in the **Federal Register** pursuant to paragraph (a) of this section; or

(2) Determines that the prevailing practice for the particular activity in the port does not permit the use of alien crewmembers.

(c) If the administrative law judge determines that the prevailing practice in that port does not permit such use of alien crewmembers, the judge's decision shall be the conclusive determination for purposes of the Act and these regulations (unless and until reversed by the Secretary on discretionary review pursuant to § ____.650). The Attorney General and ETA shall upon notice from the Administrator, take the actions specified in § ____.660.

(d) In the event that the Secretary, upon discretionary review pursuant to § ____.650, issues a decision that reverses the administrative law judge on a matter on which the Administrator has published notices in the **Federal Register** pursuant to paragraphs (a) and (b) of this section, the Administrator shall publish in the **Federal Register** a notice of the Secretary's decision and shall notify the Attorney General and ETA.

(1) Where the Secretary reverses the administrative law judge and determines that, contrary to the judge's decision, the prevailing practice for the longshore activity(ies) in the U.S. port at issue does not permit the use of alien crewmembers, the Secretary's decision shall be the conclusive determination for purposes of the Act and these regulations. Upon notice from the Administrator, the Attorney General and ETA shall take the actions specified in § ____.660.

(2) Where the Secretary reverses the administrative law judge and determines that, contrary to the judge's decision, the use of alien crewmembers is permitted by the prevailing practice for the longshore activity(ies) in the U.S. port at issue, the judge's decision shall no longer have the conclusive effect specified in paragraph (b) of this section. Upon notice from the Administrator, the Attorney General and ETA shall cease the actions specified in § ____.660.

§ ____.670 Non-applicability of the Equal Access to Justice Act.

A proceeding under subpart G of this part is not subject to the Equal Access to Justice Act, as amended, 5 U.S.C. 504. In such a proceeding, the administrative law judge shall have no authority to award attorney fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act.

Proposed Adoption of the Joint Rule

The agency specific proposed adoption of the joint rule, which appears at the end of the common preamble, appears below:

Title 20—Employees' Benefits

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

Accordingly, chapter V of title 20, Code of Federal Regulations, is amended as follows:

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

1. The authority citation for part 655 is revised to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H) and 1184; 29 U.S.C. 49 *et seq.;* §§655.0, 655.00, and 655.000 also issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1188, and 8 CFR 214.2(h)(4)(i); subparts A and C also issued under 8 CFR 214.2(h)(4)(i); subpart B also issued under 8 U.S.C. 1188; subparts D and E also issued under 8 U.S.C. 1101(a)(15)(H)(i)(a) and 1182(m) and Pub. L. 101–238, sec. 3(c)(1), 103 Stat. 2099, 2103; subparts F and G also issued under 8 U.S.C. 1288(c).

§ 655.0 [Amended]

2. Section 655.0 is amended by redesignating paragraph (c) as paragraph (a)(3), and by adding a new paragraph (c), to read as follows:

§ 655.0 Scope and purpose of part.

* * * * *

(c) *Subparts F and G of this part.* Subparts F and G of this part set forth the process by which employers can file attestations with the Department of Labor for the purpose of employing alien crewmembers in longshore work under D-visas and enforcement provisions relating thereto.

§ 655.000 [Amended]

3. Section 655.000 is amended by removing the period at the end of the first sentence therein and by adding in lieu thereof the words ", and with respect to employment of nonimmigrant (D-visa) crewmembers in longshore work under subpart F of this part.".

4. Part 655 is amended by adding new Subparts F and G as set forth at the end of the common preamble.

Subpart F—Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

Sec.

Subpart G—Enforcement of the Limitations Imposed on Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

Sec.

Signed at Washington, DC, this 15th day of April, 1991.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

Samuel D. Walker,

Acting Assistant Secretary for Employment Standards.

Lynn Martin,

Secretary of Labor.

Title 29—Labor

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

Accordingly, title 29, Code of Federal Regulations, is amended by adding a new part 506 to read as set forth below, and Subparts F and G are added to new part 506 as set forth at the end of the common preamble.

PART 506—ATTESTATIONS BY EMPLOYERS USING ALIEN CREWMEMBERS FOR LONGSHORE ACTIVITIES IN U.S. PORTS

Subparts A through E [Reserved]

Supbart F—Attestations by Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

Sec.

Subpart G—Enforcement of the Limitations Imposed on Employers Using Alien Crewmembers for Longshore Activities in U.S. Ports

Sec.

Authority: 8 U.S.C. 1288(c).

Subparts A Through E—[Reserved]

Signed at Washington, DC, this 15th day of April, 1991.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

Samuel D. Walker,

Acting Assistant Secretary for Employment Standards.

Lynn Martin,

Secretary of Labor.

[FR Doc. 91–9147 Filed 4–18–91; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 211

[Docket No. 90N–0376]

RIN 0905–AA73

Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding of Drugs; Proposed Amendment of Certain Requirements for Finished Pharmaceuticals; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to June 14, 1991, the comment period for the proposed rule published in the Federal Register of February 12, 1991 (56 FR 5671), to amend certain requirements of the current good manufacturing practice (CGMP) regulations for finished human and veterinary pharmaceuticals. The proposed amendments are intended to provide manufacturers more flexibility and discretion in manufacturing drug products while maintaining those CGMP requirements that are necessary to ensure drug product quality. This action responds to a request for an extension of the comment period.

DATES: Comments by June 14, 1991.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert J. Meyer, Center for Drug Evaluation and Research (HFD–363), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, (301) 295–8046.

SUPPLEMENTARY INFORMATION: In the Federal Register of February 12, 1991 (56 FR 5671), FDA issued a proposed rule to modify certain provisions of the CGMP regulations (21 CFR part 211). The proposed amendments would: (1) Clarify § 211.42(c) regarding the flexibility that manufacturers have to determine appropriate separate or defined areas of production and storage, (2) clarify § 211.68(b) regarding the approach to accuracy checks of input to and output from computer systems, (3) amend § 211.137 to exempt investigational new drug products from bearing an expiration date, (4) amend § 211.170(b) to permit the use of a representative sampling plan for examination of reserve samples, and (5) clarify § 211.180(e)(1) regarding the manufacturer's review of batch records for the quality standard evaluation for each drug product. The proposed amendments are intended to allow drug manufacturers more flexibility and discretion in manufacturing drug products while maintaining those CGMP requirements necessary to assure drug product quality. The proposal gave interested persons an opportunity to submit written comments by April 15, 1991.

In response to the proposal, the Nonprescription Drug Manufacturers Association (NDMA) requested a 60-day extension of the comment period. NDMA expressed its need for additional time to consult its membership and to gather information to adequately respond to the proposal. NDMA states that the requested extension of the comment period will permit them to prepare and submit constructive comments on the proposal.

FDA has carefully considered the request. The agency has determined that additional time for the preparation and submission of meaningful information and data is in the public interest. Accordingly, the comment period for submissions by any interested person is extended to June 14, 1991.

Interested persons may, on or before June 14, 1991, submit written comments regarding this proposal to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 15, 1991.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 91–9211 Filed 4–18–91; 8:45 am]

BILLING CODE 4160–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[CC Docket No. 91–33; FCC 91–51]

Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This rule making proceeding seeks comments on whether the Commission should modify its current policy governing the resale of cellular service. Under the current cellular resale policy, facilities-based carriers in each market are required to provide resale capacity to all, including the second carrier in the same market. This policy offsets any headstart competitive advantage of the first carrier to be granted a construction permit. However, once the second carrier is fully operational, the rationale for prohibiting resale restrictions between facilities-based carriers ceases to exist. The proposed rule would create a limited exception to the Commission's cellular resale policy to allow a cellular carrier to terminate resale to its competitor in the same market once that competitor is fully operational. The decision also denies the petition to expand the rule making proceeding filed by the National Cellular Resellers Association (NCRA).

DATES: Comments must be filed by May 20, 1991. Reply comments are due by June 4, 1992.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dan Abeyta, Mobile Services Division, Common Carrier Bureau (202) 632–6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rule making and order in CC Docket No. 91–33, adopted February 13, 1991, and released March 27, 1991.

The full texts of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452–1422, 1114 21st Street NW., Washington, DC 20036.

Summary of Notice of Proposed Rule Making

The Notice of Proposed Rule Making (NPRM) seeks comments on whether the Commission should require a facilities-based cellular carrier to provide resale capacity to its fully operational facilities-based competitor in the same market. The NPRM seeks comments on a proposed rule providing that a licensee shall permit resale of its services in all circumstances, except that it shall not be required to provide resale capacity to its facilities-based competitor in the same market after that competitor who is requesting resale is fully operational. The NPRM tentatively concludes that the most appropriate time to cease the resale requirement should be at the end of the second carrier's five year fill-in period. At that time, the second carrier should have had a sufficient opportunity to fully build out its system.

The Commission's policies for cellular service were designed to establish a nationwide availability of service to ensure that cellular operators could rapidly expand their system capacity as demand warrants. The NPRM states that the proposed rule, which would allow a facilities-based carrier to apply resale restrictions to its fully operational facilities-based competitor, promotes these goals by encouraging carriers to build out their systems. The NPRM seeks comment with respect to the analysis used and the proposed rule.

The NPRM tentatively concludes that the parties supporting resale restrictions with respect to fully operational licensed cellular competitors in the same market have demonstrated that such restsrictions are just and reasonable under section 201(b) of the Communications Act (Act). In this regard, the NPRM tentatively concludes that the parties supporting the limited resale restriction have demonstrated that clear public benefits exist for permitting the proposed limited resale restriction and that an adverse impact could result from a requirement that a facilities-based carrier must provide unrestricted resale capacity to its facilities-based competior.

The NPRM also tentatively concludes that resale restrictions as applied to a fully operational facilities-based cellular carrier would not constitute unjust and unreasonable discrimination in violation of section 202(a) of the Act. While the NPRM agrees with those parties who argue that resale restrictions in general are unreasonably discriminatory, it points out that making a limited exception to the general resale restriction is justified in light of the Commission's goal of stimulating competition between the two facilities-based carriers in each market.

This is a non-restricted notice and comment rule making proceeding. See § 1.206 of the Commission's Rules, 47 CFR 1.206, for the governing permissible *ex parte* contacts.

Ordering Clauses

Accordingly, it is ordered, pursuant to sections 1, 4(i), 4(j) and 303(r) of the Communications Act of 1934, 47 U.S.C. sections 151, 154(i), 154(j) and 303(r) that there is issued a notice of proposed rule making.

It is further ordered, That the Secretary shall cause a copy of this notice to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act (5 U.S.C. section 603(a)).

List of Subjects in 47 CFR Part 22

Communication common carriers, Domestic public cellular radio telecommunications service.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-9292 Filed 4-18-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 22

[CC Docket No. 91-34; FCC 91-52]

Bundling of Cellular Customer Premises Equipment and Cellular Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This rule making proceeding proposes to eliminate or substantially modify the Commission's policy prohibiting the bundling of cellular customer premises equipment and cellular radio service. Since the adoption of the bundling policy, significant changes in the cellular industry have occurred. The Notice requests comments on the benefits or possible adverse consequences of eliminating or substantially modifying the current cellular antibundling policy.

DATES: Comments must be filed by May 20, 1991. Reply comments are due by June, 4, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dan Abeyta, Mobile Services Division, Common Carrier Bureau (202) 632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in CC Docket No. 91-34, adopted February 13, 1991, and released March 27, 1990. Commissioner Duggan issuing a statement.

The full texts of Commission decisions are available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street NW., Washington, DC 20036.

Summary of Notice of Proposed Rule Making

The Notice of Proposed Rule Making (NPRM or Notice) seeks comment on whether we should clarify or modify our policy governing bundling of cellular customer premises equipment (CPE) and cellular service. The Notice indicates that the cellular market has changed significantly since the cellular bundling policy was adopted. In reevaluating the Commission's antibundling policy, the NPRM states that we need to look at (1) the competitiveness of the cellular CPE market; (2) the competitiveness of the cellular service market; (3) the status of federal and state regulations of cellular service; (4) whether consumers will be harmed by permitting bundling and; (5) the public interest benefits of permitting bundling. The NPRM points out that in light of these changes and in order to develop a more complete record, it is appropriate to reevaluate the antibundling policy. The NPRM tentatively concludes that a consideration of all the factors noted above and the existence of the antitrust laws warrant allowing the bundling of cellular CPE and service.

First, the NPRM states that the CPE market appears to be competitive both locally and nationally, resulting in the widespread availability of CPE from a multiplicity of vendors. The NPRM requests input on what effect any changes in the unbundling requirements might have on competition in the cellular CPE market. The NPRM seeks information on how cellular CPE is distributed today and on cellular CPE manufacturers. Also, in order to understand the relationship between the cellular CPE market and the cellular industry, the NPRM seeks comment concerning the extent to which facilities-based carriers or their agents have entered into exclusive dealing arrangements with particular CPE manufacturers.

Second, the NPRM states that a reexamination of the unbundling policy is justified in light of the considerable growth of the cellular industry. Within each market, facilities-based carriers compete not only against each other, both directly and through agents, but also with numerous resellers. Hence, the NPRM tentatively concludes that the cellular service market is sufficiently competitive so that bundling would not effect competition in the cellular CPE market. The Notice requests comment on this tentative conclusion.

Third, the NPRM points out that cellular service is largely unregulated at both the federal and state levels. The regulations that do exist appear to be directed toward enhancing competition rather than focusing on traditional rate of return methods used to regulate monopoly services. The NPRM therefore tentatively concludes that the lack of regulation of the cellular industry

reflects the competitiveness of the industry and a decreasing concern that carriers are using largely untariffed cellular service rates to act anticompetitively in the untariffed and unregulated cellular CPE market.

Fourth, the NPRM tentatively concludes that consumers are not likely to be harmed by permitting bundling. In this regard, the NPRM indicates that it appears unlikely that the elimination of the antibundling rule will affect cellular service prices because cellular service prices appear to be market driven. The NPRM also seeks comments on whether a modification of the antibundling rule would adversely affect cellular service prices.

Fifth, the NPRM tentatively concludes that there may be significant public interest benefits associated with bundling of cellular service and CPE. The cellular industry has developed a variety of marketing practices, such as discounting costs to consumers and packaging of cellular CPE and cellular service. The NPRM points out that these practices can benefit consumers by offering them an expanded choice of goods and services at reduced costs. The NPRM seeks comment on the potential public interest benefits of permitting bundling of cellular CPE and cellular service.

Lastly, the NPRM seeks comment on whether if bundling were prohibited, cellular service providers would be likely to employ alternative techniques to attract new customers, such as offering promotional service rates. The NPRM also requests comment on whether there may be certain limited instances justifying adoption of a substantially modified bundling policy or whether some minimal requirement against bundling should be maintained. Finally, the NPRM requests comment on how our policy regarding bundling should be applied to cellular carrier's agents and other distribution outlets.

This is a non-restricted notice and comment rule making proceeding. See § 1.1206 of the Commission's Rules, 47 CFR 1.1206, for the governing permissible *ex parte* contacts.

Ordering Clauses

Accordingly, IT IS ORDERED, pursuant to sections 1,4(i), 4(j), and 303 of the Communication Act of 1934, as amended. 47 U.S.C. 151, 154(i), and 154(j) and 303, that there is issued a notice of proposed rule making.

List of Subjects in 47 CFR Part 22

Communications common carriers, Domestic public cellular radio telecommunications service.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 91-9290 Filed 4-18-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-109, RM-7646]

Radio Broadcasting Services; Natchitoches, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Cane River Communications, Inc., licensee of Station KDBH(FM), Channel 249A, Natchitoches, Louisiana, seeking substitution of Channel 247C3 for Channel 249A and modification of its authorization accordingly. Channel 247C3 can be allotted to Natchitoches in compliance with the Commission's minimum distance separation requirements at Station KDBH(FM)'s present transmitter site. The coordinates for Channel 247C3 at Natchitoches are North Latitude 31-45-47 and West Longitude 93-03-47. In accordance with § 1.420(g) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 247C3 at Natchitoches or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before June 6, 1991, and reply comments on or before June 21, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Bruce A. Eisen, Esq., Kaye, Scholer, Fierman, Hays & Handler, 901 15th Street, NW., suite 1100, Washington, DC 20005 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91-109, adopted April 1, 1991, and released April 15, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-9166 Filed 4-18-91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 91-110, RM-7678]

Radio Broadcasting Services; Hastings and Milford, NE

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Bott Communications, Inc., seeking the reallotment of Channel 251C from Hastings to Milford, Nebraska, as the community's first local aural transmission service, and the modification of Station KUHG(FM)'s construction permit to specify Milford as its community of license. Channel 251C can be allotted to Milford in compliance with the Commission's minimum distance separation requirements with a site restriction of 46.5 kilometers (28.9 miles) west to accommodate petitioner's desired transmitter site. The coordinates for Channel 251C at Milford are North Latitude 40-48-00 and West Longitude 97-36-00. In accordance with 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in use of Channel 251C at Milford or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before June 7, 1991, and reply comments on or before June 24, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Harry C. Martin, Esq., Matthew H. McCormick, Esq., Reddy, Begley & Martin, 2033 M Street, NW., suite 500, Washington, DC 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–110, adopted April 1, 1991, and released April 16, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–9284 Filed 4–18–91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 90–597; RM–7357]

Radio Broadcasting Services; Ingram, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: At the request of Richman Phipps, the Commission dismisses the petition for rule making proposing the allotment of channel 296A to Ingram, Texas, as that community's first local FM service. See 55 FR 51134, December 12, 1990. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–597, adopted April 2, 1991, and released April 16, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–9283 Filed 4–18–91; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89–520; RM–6966]

Radio Broadcasting Services; Levelland, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: At the request of KLVT Radio, Inc., the Commission dismisses the petition for rule making proposing the allotment of Channel 253A to Levelland, Texas, as that community's second local FM service. See 54 FR 48776, November 27, 1989. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Fawn E. Wilderson, Mass Media Bureau (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–520, adopted April 2, 1991, and released April 16, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–9293 Filed 4–18–91; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 81–2; Notice 11]

RIN 2127–AD35

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: This notice proposes that Motor Vehicle Safety Standard No. 108 be amended to allow the physical combination (but not the optical combination) of the center high-mounted stop lamp with cargo bed lamps on vehicles other than passenger cars. This rulemaking action arises from comments to the docket on NHTSA's proposal to require center high-mounted stop lamps on multipurpose passenger vehicles, trucks, and buses with a GVWR of 10,000 pounds or less and an overall width of less than 80 inches.

DATES: The comment closing date for the proposal is June 3, 1991. Any request for an extension of time in which to comment must be received not later than 10 days before June 3, 1991. The proposed effective date is September 1, 1992.

ADDRESSES: Comments should refer to the docket number and the notice number, and be submitted to: Docket Section, room 5109, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours are from 9:30 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Richard Reed, Office of Rulemaking, NHTSA (202–366–4924).

SUPPLEMENTARY INFORMATION: This supplemental notice of proposed

rulemaking grows out of a notice of proposed rulemaking published on May 31, 1990 (55 FR 22039), to require the installation of center high-mounted stop lamps (CHMSL's) on multipurpose passenger vehicles, trucks, and buses with an overall width of less than 80 inches, and whose GVWR is 10,000 pounds or less (referred to, for convenience, as "light truck CHMSL's"). A final rule based on the May 1990 proposal is being published elsewhere in this issue of the **Federal Register**. That final rule requires mandatory installation of light truck CHMSL's for vehicles manufactured on and after September 1, 1993, with optional installation of conforming lamps permitted as of September 1, 1992.

Combining the Center Lamp With Other Vehicle Equipment

The May 1990 proposal did not propose any change in the Standard No. 108 provision prohibiting the combination of a CHMSL with any other lamp or reflective device. In response to the proposal, Chrysler, Ford, and General Motors requested that the CHMSL be permitted to be combined with the cargo-bed lamp typically found on the rear of the cab of pickup trucks. They reasoned that despite the specific prohibition in S5.4 against the combining of a CHMSL with any other lamp, the combination of a CHMSL with a cargo lamp would have absolutely no negative safety effect because of the nature and use of the two lamps. The cargo lamp is a white colored lamp actuated by the user for illuminating the cargo area of the Pickup bed. It is typically electrically connected to the interior dome lamp. Thus, the likelihood of driving with the cargo lamp illuminated is low. Commenters also said that the two lamps would not likely to be optically combined, since they are two different colors, but they would be in a common housing, probably with a cargo lamp flanking each side of the CHMSL for symmetrical appearance. General Motors specifically suggested a prohibition of optical combination, however.

The agency sees no reason to prohibit the physical combination of a CHMSL and a cargo lamp. However, it does see a reason to prohibit *optical* combination. Under the definition that the agency proposed on November 8, 1990 (55 FR 46961) an "optical combination" is a "combination within a lamp of two or more separate light sources or a single light source that operates in different ways, such as a dual filament bulb, where the optically functional lens area of the lamp is wholly or partially common to two or more lamp functions." The lamps should be prohibited from being optically combined because of the likelihood of the use of light emitting diodes (LEDs) as light sources. These are already used for many passenger car CHMSL's. They need no red lens since the LEDs used emit only red light, and, thus, can be used with a clear lens. Since the cargo lens is also clear, the possibility exists that the two lamps could easily be optically combined. This is a potentially unsafe situation. Should a driver inadvertently leave his or her vehicle's dome light (and thus cargo lamp) on while driving, a red CHMSL using the same clear lens as the cargo lamp would have little chance of being seen in the background of white light created by the cargo lamp. The agency is, therefore, proposing a definition of "cargo-bed lamp", and an amendment of S5.4 to permit the combination of the CHMSL and a cargo lamp in the same housing, but prohibiting their optical combination. For ease of reference, the proposal incorporates the definition of "optically combined" that was proposed in November 1990.

Proposed Effective Date

It is proposed that the effective date of the amendment allowing the combining of a CHMSL with a cargo bed lamp be September 1, 1992. The agency has tentatively selected that date since light trucks manufactured on or after that date may be equipped with CHMSL's meeting the requirements of Standard No. 108. Because CHMSL's may not be installed on light trucks before that date, and because compliance with an amendment based on this proposal would not be mandatory, it is hereby found for good cause shown that an effective date later than one year after issuance of the final rule would be in the public interest.

Impact Analyses

NHTSA has considered the impacts of this rulemaking action and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation," or significant under Department of Transportation regulatory policies and procedures. The proposal is permissive in nature. Manufacturers who take advantage of the amendment may realize cost savings of no more than several dollars per vechile.

NHTSA has analysed this proposed rule for purposes of the National Environmental Policy Act. The proposed rule would not have a significant effect upon the environment as the increase in materials required by the manufacture of a combination lamp is not deemed significant.

The agency has also considered the effects of this proposed rule in relation to the Regulatory Flexibility Act. I certify that this proposed rule would not have a significant economic effect upon a substantial number of small entities. Lamp manufacturers and manufacturers of vehicles with open cargo beds are generally not small businesses within the meaning of the Regulatory Felxibility Act. Further, small organizations and governmental jurisdications would not be significantly affected as the price of new vehicles, if equipped with a combination lamp, should not be more than minimally impacted. Accordingly, no Regulatory Flexibility Analysis has been prepared.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 "Federalism." It has been determined that the proposed rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Interested persons are invited to submit comments on the proposal. Please submit 10 copies of written comments and 2 copies of films, tapes, and other materials. All comments must be limited not to exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15–page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the docket section. A request for confidentiality should be accompained by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR part 512).

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in

regard to the action will be treated as suggestions for future rulemaking. NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket superivsor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. In S4 *Definitions*, of Standard No. 108, definitions of "cargo-bed lamp" and "optical combination" would be added in alphabetical order, and S5.4 would be revised, to read:

§ 571.108 Standard No. 108; Lamps, reflective devices, and associated equipment.

* * * * *

S4. *Definitions.*

* * * * *

Cargo-bed lamp is a lamp is mounted on the rear of the cab of a truck or multipurpose passenger vehicle with an open cargo bed and that is used to illuminate the cargo bed.

* * * * *

Optically combined means a combination within a lamp of two or more separate light sources, or a single light source that operates in different ways, such as dual filament bulb, where the optically functional lens area of the lamp is wholly or partially common to two or more lamp functions.

* * * *

S5.4 *Equipment combinations.* Two or more lamps, reflective devices, or items of associated equipment may be combined if the requirements for each lamp, reflective device, and item of associated equipment are met, with the following exceptions:

(a) No high-mounted stop lamp shall be combined with any other lamp or reflective device, other than with a cargo-bed lamp.

(b) No high-mounted stop lamp shall be optically combined with any cargo-bed lamp; and

(c) No clearance lamp shall be optically combined with any taillamp.

* * * * *

Issued on April 11, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91-9219 Filed 4-16-91; 12:20 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB56

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Fish the Goldline Darter (Percina aurolineata) and Blue Shiner (Cyprinella caerulea)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to list the goldline darter (*Percina aurolineata*) and the blue shiner (*Cyprinella caerulea*) as threatened species under the authority of the Endangered Species Act (Act) of 1973, as amended. The goldline darter occurs in the Cahaba River System, Alabama, and in fragmented populations in the upper Coosa River System, Georgia. The blue shiner has been extirpated from the Cahaba River System and occurs in fragmented populations in the upper Coosa River System, Alabama, Georgia, and Tennessee. These two fishes have declined due to loss of habitat from reservoir construction and degradation of water quality, as well as the effects of habitat fragmentation. This proposal, if made final, would implement Federal protection provided by the Act for these species. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by June 18, 1991. Public hearing requests must be received by June 3, 1991.

ADDRESSES: Comments and materials concerning this proposal should be sent to U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Stewart at the above address (601/965-4900 or FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

The goldline darter, *Percina aurolineata*, was described in 1967 by Suttkus and Ramsey from specimens captured in the Cahaba and Coosawattee Rivers. This darter is historically known from 49 miles of the Cahaba River and almost 7 miles of the Little Cahaba River in Alabama (Stiles 1978, 1990). It has been collected from Schultz Creek, a Cahaba River tributary (M.F. Mettee, *in litt.* 1990). It has been collected from the upper Coosa River drainage in the Coosawattee, Ellijay and Cartecay Rivers (Freeman 1983). The latter two are tributaries that form the Coosawattee River. The goldline darter has also been collected in Mountaintown and Boardtown Creeks, tributaries of the Ellijay River, and from Talking Rock Creek, a tributary of the Coosawattee River below Carters Reservoir (Freeman 1983; Pierson, pers. comm. 1990; S.R. Layman, *in litt.* 1990).

The blue shiner was described from tributaries of the Oostanaula River, Georgia, by Jordan in 1877 (Pierson and Krotzer 1987). The blue shiner is frequently mentioned in the literature as *Notropis caeruleus*. In the past it has been recognized as a member of the subgenus *Cyprinella*. A revision of the genus *Notropis* elevated *Cyprinella* to generic status (Mayden 1989). The American Fisheries Society is revising "A List of Common and Scientific Names of Fishes from the United States and Canada" and is recognizing Mayden's elevation of *Cyprinella* to generic status (S.R. Layman, AFS Endangered Species Committee, *in litt.* 1990). This medium-sized minnow is historically known from the Cahaba and Coosa River systems. It was last collected from the Cahaba River System in 1971 (Ramsey 1976). The Alabama range for this species is Weogufka and Choccolocco Creeks and the lower reach of Little River (Pierson and Krotzer 1987). In Tennessee, the range includes the Conasauga River and a tributary, Minnewauga Creek. In Georgia, the blue shiner is found in the Conasauga and Coosawattee Rivers and the tributaries, Holly, Rock, Perry, and Turniptown Creeks (Freeman 1983). The species no longer exists in Big Wills Creek, a tributary of the upper Coosa River (Pierson and Krotzer 1987).

Both species may have once occupied most of the upper Coosa and Alabama River drainages. The actual extent of the historic range and of the decline cannot

be determined. Recent range reductions have been well documented.

The goldline darter is a slender, medium-sized fish, about 3 inches long with brownish-red and amber dorsolateral stripes. It differs from other members of the subgenus *Hadropterus* in the color pattern of the back (Kuehne and Barbour 1983). The goldline darter has a pale to dusky back. Its white belly has a series of square lateral and dorsal blotches that are separated by a pale or gold-colored longitudinal stripe. The goldline darter prefers a moderate to swift current and water depths greater than 2 feet (Howell *et al.* 1982). It is found over sand or gravel substrate interspersed among cobble and small boulders. Practically nothing is known about the life history of the goldline darter.

The blue shiner is a medium-sized minnow that may attain 4 inches in total length. It often appears to be dusky blue with pale yellow fins (Ramsey 1986). The scales are strongly diamond-shaped and outlined with melanophores. The lateral line is distinct. Some aspects of the life history in the Conasauga River, Georgia, have been studied (Krotzer 1990). The blue shiner occurs over a sand and gravel substrate among cobble in cool, clear water (Gilbert *et al.* 1979).

Federal Register publications for the goldline darter include the notice of review on March 18, 1975 (40 FR 12297), a proposed rule on November 29, 1977 (42 FR 60765), a notice of public hearing and extension of the comment period on February 6, 1978 (43 FR 4872), a correction of proposed critical habitat on April 7, 1978 (43 FR 14697), a withdrawal of the proposed rule for administrative reasons on January 24, 1980 (45 FR 5782), and notice of reviews on December 30, 1982 (47 FR 58454), on September 18, 1985 (50 FR 37958), and on January 6, 1989 (54 FR 554). A public hearing was held in Birmingham, Alabama, on March 15, 1978. Several studies have been conducted on this species since the proposal was withdrawn.

Federal Register publications on the blue shiner are the notice of review on September 18, 1985 (50 FR 37958) and on January 6, 1989 (54 FR 554). It has not been previously proposed for Federal protection.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the goldline darter, *Percina aurolineata*, and the blue shiner, *Cyprinella caerulea*, are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The goldline darter no longer occurs upstream of Booths Ford in the Cahaba River (Howell *et al.* 1982) and populations seem to have declined throughout the Cahaba River System (Stiles 1990). The goldline carter continues to exist in fragmented populations in the Coosawatte River, Georgia (Freeman 1983), in about 7 miles of the Little Cahaba River, and in 27 miles of the 49 miles of historic range in the Cahaba River, Alabama (Howell *et al.* 1982, Stiles 1990). Three adult specimens have been collected from Schultz Creek, a Cahaba River tributary (M.F. Mettee, Geological Survey of Alabama, *in litt.* 1990). It is not known if this represents an expansion of the range or if these darters are a part of the Cahaba River population.

The blue shiner has been extirpated from the Cahaba River System (Ramsey 1976, Pierson and Krotzer 1987, Pierson *et al.* 1989). It has not been collected form Big Wills Creek of the upper Coosa River System since 1958 (Pierson and Krotzer 1987). The blue shiner continues to exist in the Coosawatte and Conasauga River systems, Georgia, in the Conasauga River system, Tennessee, in Choccolocco and Weogufka Creeks, tributaries of the Coosa River, Alabama, and at one site in Little River, Alabama (Freeman 1983, Pierson and Krotzer 1987).

The reduction in range of the goldline darter and the extirpation of the blue shiner from the Cahaba River System is the result of water quality degradation (Howell *et al.* 1982, Ramsey 1982, Pierson and Krotzer 1987). Historic populations of the goldline darter and blue shiner have been seriously affected by urbanization, sewage pollution, and strip-mining activities in the upper Cahaba River basin. During their study of the upper Cahaba River, Howell *et al.* (1982) observed adverse impacts to water quality from the Cahaba River and Patton Creek Sewage Treatment Plants, limestone quarries on Buck Creek, and strip-mining in the area of Piney Woods Creek and Booth Ford. In recent years, the Patton Creek plant has been replaced by the upgraded Cahaba River plant. Adverse impacts from these plants have been reduced.

Since he began collecting on the Cahaba River in 1962, Ramsey (1982) has observed an increase in blue-green algae, an indicator of water quality degradation, at several localities. One location in particular, just below the Shelby County Highway 52 bridge, has been adversely affected by a diminution of vascular plants, apparently displaced by a substantial growth of blue-green algae on much of the rock and rubble substrate. This loss of vascular plants is correlated with the extirpation of Cahaba shiners, goldline darters, and blue shiners from this area since 1969.The effects on the fauna of water rich in dissolved nutrients can be magnified in still pools during low flows and high temperatures. Dissolved oxygen often drops to low levels. In some stretches of the river, virtually all of the water flow in the Cahaba River during low flows consists of treated sewage effluent.

O'Neil (1984) and the Environmental Impact Statement for the Cahaba River Wastewater Facilities, Jefferson, Shelby, and St. Clair Counties, Alabama, (U.S. Environmental Protection Agency (EPA) 1979) identified and projected water quality problems in the Cahaba River. Relatively high levels of total inorganic nitrogen and total phosphorus were found at several locations throughout the basin. Increased algal biomass, high diurnal oxygen fluctuations, and decreased oxygen were found when water levels were low. The EPA found water flow in the Cahaba River was insufficient to handle sewage needs and that alternative water supplies to increase flow could have an adverse effect on the biota.

In the Cahaba River basin, there are 10 municipal wastewater treatment plants, 35 surface mining areas, 1 coalbed methane and 67 other permitted discharges (Alabama Department of Environmental Management, *in litt.* 1990). Since the EPA study, some of the wastewater treatment plants have been upgraded. However, this has not eliminated the problem of enrichment in the Cahaba River. Sewage that has received tertiary treatment is still high in nutrients and can contribute to eutrophication of an aquatic system. Not all plants provide tetiary treatment to their wastewater, nor are many capable of treating the heavy inflow that occasionally occurs. The Centerville-Brent plant is designed for 702,000 gallons per day. The only treatment is a three cell series of lagoons for settling. The actual flow of the Centerville-Brent plant has not been determined. The Helena waste treatment plant is designed for 250,000 gallons per day

with an actual flow of 262,000 gallons per day. While this plant provides more treatment than just settling lagoons, the inflows that exceed the capacity of the plant must be bypassed. The Cahaba Wastewater Treatment Plant is designed for 12 million gallons per day and receives an average of 9 million gallons per day (Jack Swann, Jefferson County Director of Environmental Services, pers. comm. 1990). During periods of heavy inflows, i.e., rainfall, etc., the capacity of the plant is exceeded and some wastewater bypasses at least some treatment stages. During the period December 1987 to June 1990, there were 14 reported periods when some wastewater bypassed the treatment at the Cahaba River plant (Leigh Pegues, *in litt.* 1990). These reported periods were of 1 to 14 days duration with an estimated bypass of 520 million gallons of untreated wastewater. The periodic influx of organic matter to the Cahaba River indicates that many of the problems identified by the EPA continue to exist.

Waste quality in the Cahaba River is further affected by siltation from surface mining, road construction, and site preparation for drilling operations. Recent fish collections in the Cahaba River have shown a signfiicant decrease in species diversity and density as the siltation increased. Stiles (1990) observed considerable sediment in the Little Cahaba and Cahaba Rivers and commented that it may be a major reason for the decline of fish species diversity.

There is considerable interest in methane gas extraction in the Cahaba River Basin. The Alabama Department of Environmental Management (ADEM) has issued three permits for the discharge of gas well wastewater into the Cahaba River. One of these permits has been returned to ADEM as a result of a permit violation, one of the permits has expired because the permittee did not start operations within the specified time period, and the other permittee is not currently discharging wastewater. The 2-year extension of tax incentives for methane gas extraction is expected to increase interest in that activity in the Cahaba River basin. Permitted discharge limits (based on chlorides, Ph, and dissolved oxygen) are designed to maintain the fish and wildlife quality of the Cahaba River. However, the potential for the discharge of wastewater from these wells in excess of permitted levels and the subsequent impact on the goldline darter is a concern. There is also a possibility for adverse impact from other pollutants that may be in wastewater from methane gas wells. The basis for establishing water quality limits and monitoring permitted discharge is also a concern. The fish species used for toxicity testing and monitoring is the fathead minnow, *Pimephales promelas*. This species is known to be very hardy and tolerant of water quality degradation. It is not native to the Cahaba River System and may not be representative of native species. There are no mollusks used in the toxicity testing and this important group may serve as food for some fish during some life stages.

In 1978 (Howell *et al.* 1982, Stiles 1990), the goldline darter was abundant in some stretches of the Little Cahaba River. In the Little Cahaba River, there has been an increase in sediment since 1987 and a fish kill (Stiles 1990). The increase in sediment is apparently the result of road construction and clearing for a wood treatment plant, and the operation of limestone quarries and cement plants (Stiles 1990). The 1987 fish kill was possibly a result of clearing a hillside, staking treated lumber, and the subsequent influx of sediments and wood preservatives into the Little Cahaba River by a heavy rain (Stiles 1990). In the stretch of the Little Cahaba River affected by sediment, Stiles (1990) has only collected or observed four goldline darters since 1987. In intensive collecting since September 1989, the Geological Survey of Alabama has collected only seven goldline darters in the Cahaba River System, with none of them from the Little Cahaba River (Mettee *in litt.* 1990). No blue shiners have been collected in that effort.

Any populations that historically occupied the upper Alabama and Coosa Rivers were undoubtedly extirpated by the near total impoundment of both rivers. Upstream of the confluence with the Cahaba River, the Alabama River has been impounded for hydropower, navigation and flood control. With the exception of about three miles below Jordan Dam, the Coosa River is completely impounded for hydropower and flood control. In addition to extirpating any historic populations by inundation, these reservoirs have isolated tributary populations as discussed under Factor E. While the Service is unable to determine how many tributaries of the Coosa River System once contained populations of either of these species, there is no reason to conclude that the historic range did not include other tributaries.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Collecting of these two species is not a likely threat. However, when the population of a species is adversely impacted by habitat degradation, the removal of individuals by a collector can become more significant than if the population were healthy.

C. Disease or Predation

Both of these fish are prey species and are subject to natural disease outbreaks. As with collecting, this is not a likely threat to healthy populations. However, if a population is stressed by other factors like eutrophication, then disease and predation can be significant to the species' survival, even if they are a natural occurrence.

D. The Inadequacy of Existing Regulatory Mechanisms

Neither of these species are given any special consideration when project impacts are reviewed for compliance with various environmental laws and regulations. All the States where these species occur require scientific collecting permits. Violations of these permit requirements are very difficult to apprehend.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The range of both species has been reduced and fragmented by many reservoirs for flood control and hydropower. This has resulted in several isolated populations. Isolating populations makes them very susceptible to environmental changes, may result in decreased genetic diversity, and may make finding mates difficult for short-lived species, such as these species appear to be.

Impoundment of the upper Alabama and Coosa Rivers has isolated the goldline darter populations in the Cahaba River System from all other populations. Talking Rock Creek joins the Coosawattee River in a pump storage reservoir downstream of Carters Reservoir and isolates a population of goldline darters from all other populations. The other populations of the goldline darter in the Coosawattee River system, other than Talking Rock Creek, are not isolated by reservoirs from each other. However, they are separated by many river miles and it is unlikely there is much genetic exchange between them and improbable that a population, if extirpated, would be naturally replaced. The reason(s) for this isolation is not clear. These streams have habitat that would appear suitable,

yet the species has only been collected at intermittent sites. This could be from topography or from some other reason that is not apparent. Regardless, this isolation makes a population more susceptible to environmental disturbance.

The blue shiner occurs in the Coosawattee River (one site), Turniptown Creek (one site, a tributary to the Ellijay River), at seven sites on the Conasauga River, and at single sites in three tributaries of the Conasauga River (Freeman 1983). The Coosawattee River System populations are isolated from all other populations by Carters Reservoir. Populations in the Conasauga River tributaries, Holly and Rock Creeks, are probably isolated from all other populations by distance, topography or other unknown reasons. The mainstem Conasauga River and Minnewauga Creek populations are likely accessible to each other but isolated from all other populations by distance, topography or other reasons. The blue shiner occurs in Little River and in Choccolocco and Weogufka Creeks, all Coosa River tributaries (Pierson and Krotzer 1987). The only known site in Little River is near its confluence with Weiss Reservoir. Due to the difficulty of sampling that stream, the population may be more widespread in Little River than indicated. Regardless of the extent of the Little River population, it is isolated from all other populations by Weiss Reservoir. The small population in Weogufka Creek is isolated by Lake Mitchell. There are four known sites for the blue shiner in Choccolocco Creek. The populations in Choccolocco Creek are restricted to sites above Anniston, Alabama, possibly by water quality degradation. Drainage from Anniston Army Depot enters Choccolocco Creek and there is a history of contaminant problems on that installation (Schalla *et al.* 1984, Environmental Science and Engineering, Inc. 1986, Kangas 1987). While the blue shiner still exists at several sites in the Coosa River System, most of the populations are isolated from other populations and vulnerable to environmental changes. Any event that adversely affects an isolated population has the potential to eliminate it.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list the goldline darter and blue shiner as threatened. Threatened status was chosen because both species still exist in several fragmented populations that are apparently reproducing. These fragmented populations preclude a single event from endangering either species.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these species due to the lack of benefit from such designation. All Federal and State agencies likely to be involved have been notified of the location and importance of protecting these species' habitat. When combined Federal and State protections are considered, the designation of critical habitat will not provide significant net benefits to the goldline darter or blue shiner above and beyond the benefits gained from listing alone. Any activity within or upstream of the known range for either species will be carefully reviewed. Protection of these species' habitat will be addressed through the recovery process and through the Section 7 jeopardy standard. Therefore, it would not now be prudent to determine critical habitat for the goldline darter or the blue shiner.

Available Conservation Measures

Conservaiton measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The Corps of Engineers will consider these species in project planning. The Environmental Protection Agency will consider both species in administering the provisions of the Clean Water Act. The Federal Highway Administration will consider these species when highway and bridge maintenance and construction is in proximity to the known range. The Federal Energy Regulatory Commission will consider both species when relicensing hydropower plants.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or

suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to these species;

(2) The location of any additional populations of these species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and,

(4) Current or planned activities in the subject area and their possible impacts on these species.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is James H. Stewart (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under FISHES, to the List of Endangered and Threatened Wildlife.

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes:							
Darter, goldline	*Percina aurolineata*	U.S.A. (AL,GA)	Entire	T		NA	NA
Shiner, blue	*Cyprinella (-notropis) caerulea.*	U.S.A. (AL,GA,TN)	Entire	T		NA	NA

Dated: March 29, 1991.

Richard N. Smith,

Director, Fish and Wildlife Service.

[FR Doc. 91-9192 Filed 4-18-91; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

RIN 1018-AB56

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Five Puerto Rican Trees

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Callicarpa ampla* (capá rosa), *Styrax portoricensis* (palo de jazmin), *Ternstroemia luquillensis* (palo colorado), *Ternstroemia subsessilis* (no common sense) and *Ilex sintenisii* (no common name) to be endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. With possibly one exception, these species are endemic to Puerto Rico and are currently found only in the Luquillo Mountains. All are extremely rare and threatened by forest management practices, construction of communication facilities on high peaks, hurricane damage, and collection. This proposal, if made final, would implement the Federal protection and recovery provisions afforded by the Act for *Callicarpa ample, Styrax portoricensis, Ternstroemia luquillensis, T. subsessilis* and *Ilex sintenisii*. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received June 18, 1991. Public hearing requests must be received by June 3, 1991.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, during normal business hours at this office, and at the Service's Southeast Regional Office, Suite 1282, 75 Spring Street, SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Marelisa Rivera or Ms. Susan Silander at the Caribbean Field Office address (809/851-7297) or Mr. Dave Flemming at the Atlanta Regional Office address (404/331-3585 or FTS 841-3583).

SUPPLEMENTARY INFORMATION:

Background

Callicarpa ampla (capá rosa) was described by Schauer in 1847 from specimens collected in 1827 by Wydler at an unknown location in Puerto Rico (Schauer, 1847). Since then it has been collected only seven times: six specimens are from Puerto Rico and one reportedly came from St. Thomas, U.S. Virgin Islands (Vivaldi and Woodbury, 1981). However, whether or not the specimen indicated as having been collected from St. Thomas actually came from there is questionable (Vivaldi and Woodbury, 1981). In Puerto Rico, this species has been collected in Barranquitas, Adjuntas, Utuado, Cayey, and the Luquillo Mountains. At present, the species is known only from the palo colorado forest association, at elevations above 650 meters. Only seven trees, in four locations have been located.

Callicarpa ampla is an evergreen tree which may grow to 50 feet (15 meters) tall. The young twigs are 4-sided and whitish. Leaves are opposite, entire, broadest at the middle and taper to both ends. They are 3 to 14 inches (8 to 35 centimeters) long, 1½ to 3 inches (3.3 to 7 centimeters) wide, green on the upper surface, densely white scurfy below, and borne on a petiole about 1 inch (2.2 centimeters) in length. The inflorescence is branched and has numerous, small, whitish flowers each with a 4-lobed corolla about ⅛ inch (.3 centimeters) long. Fruits are white when young but become purplish upon maturity, and are ¼ inch (.5 centimeter) in diameter, with the calyx attached at the base (Vivaldi and Woodbury, 1981).

Styrax portoricensis (palo de jazmin) was collected for the first time in 1885 from the eastern mountains of Puerto Rico by Paul Sintenis and described by Krug and Urban in 1892 from those same specimens. Collected only twice, in 1935 and 1954, it was thought to be extinct until rediscovered by the U.S. Forest Service in 1985 (Carlos Rivera, pers. comm.). Only one tree is presently known and occurs in the palo colorado forest association of the Luquillo Mountains. It suffered slight damage from Hurricane Hugo in September 1989 (Carlos Laboy, pers. comm.).

Styrax portoricensis is an evergreen tree which may reach 66 feet (20 meters) in height. Leaves are alternate, without stipules, entire with margins turned under, 2½ to 4 inches (6 to 10 centimeters) long and 1¼ to 2 inches (2.75 to 4.4 centimeters) wide, tapered at both ends and widest at the middle. They are shiny dark green above, pale green below, hairless, but occasionally with scattered star-shaped scales. The inflorescence is 3 to 6 flowered raceme, each flower being borne on a curved pedicel ⅜ to ⅝ inch (.8 to 1.4 centimeter) long. Fruits are a one-seeded elongated drupe, about ½ inch (1.1 centimeter) in diameter, densely covered with scales and maintaining the cup-shaped calyx at the base (Vivaldi et al., 1981a).

Ternstroemia luquillensis (palo colorado) was described by Krug and Urban in 1896 on the basis of three specimens, two collected by Paul Sintenis and one collected by Eggers. It was once known from both the palo colorado and dwarf forests of the Luquillo Mountains; however, the two populations reported from the dwarf forest are no longer present. The largest was destroyed by the construction of communication towers on El Yunque peak, and the other population was destroyed by a hurricane. Only two individuals, located in the colorado forest type, have been reported in recent years (Vivaldi et al., 1981b).

Ternstroemia luquillensis is an evergreen tree reaching 60 feet (18 meters) in height. The leaves are alternate, thick and leathery, and widest at the middle but acute at both ends. They are up to 4 inches (10 centimeters)

long and about 3 times longer than wide. Both surfaces are green and the underside is black punctate. The flowers are showy, approximately 1 inch (2.5 centimeters) in diameter and the 5 petals are white or cream colored and concave. Fruits are ovoid capsules which are terminated by the persistent style. Seeds are red and about 3 millimeters in length (Vivaldi et al., 1981b).

Ternstroemia subsessilis was first collected in 1914 by J.A. Shaffer in the Luquillo Mountains and again in 1923 by Britton and Brunner at the summit of El Yunque. Although observed, but not collected, in the Maricao Forest in the 1950's by Roy O. Woodbury, it is now apparently restricted to the palo colorado forest of the Luquillo Mountains (Vivaldi et al., 1981c). Trees of this species previously reported from the dwarf forest were destroyed by the construction of communication facilities on El Yunque peak.

T. subsessilis is an evergreen shrub or small tree which may reach 17 feet (5 meters) in height. Leaves are alternate, entire, stiffly coriaceous, obovate or oblanceolate, 1¼ to 3 inches (3 to 7 centimeters) long and ½ to 1 inch (1.5 to 2.8 centimeters) wide. Both leaf surfaces are dull green but the lower surface is black punctate. Flowers are solitary, white, ½ inch (1 centimeter) in diameter, sessile, and axillary at the ends of the branches. The fruit is an ovoid-conical capsule about 10 millimeters long and tapering to a sharp point. Twenty-four individuals in three populations have been reported (C. Laboy, pers. comm.).

Ilex sintenisii was first discovered by Paul Sintenis in the upper elevations of the Luquillo Mountains. This Puerto Rican endemic is found only in the Luquillo Mountains where it is restricted to the dwarf or elfin forest. The dwarf forest covers only approximately 225 hectares or 2 percent of the Caribbean National Forest. It is threatened by the continued construction and expansion of communication facilities on these high peaks.

I. sintenisii is a shrub or small tree which may reach 15 feet (4.5 meters) in height and 3 inches (7.6 centimeters) in diameter. Leaves are alternate, glabrous, obovate to elliptic, coriaceous, ⅜ to 1⅛ inch (1 to 2.5 centimeters) long and ¼ to ¾ inch (.6 to 1.9 centimeters) wide, and notched at the apex with the edges turned under. The bark is gray, smooth, and usually covered with mosses and liverworts. The flowers are white, axillary on pedicels ¼ to ⅜ inch (.6 to 1 centimeter) long, and 4 to 5 parted. Fruits are drupes and green when immature.

The Luquillo Mountains are found in the extreme northeastern part of Puerto Rico. The majority of the area (11,300 hectares) is managed by the U.S. Forest Service as the Caribbean National Forest. Four forest associations have been identified in these mountains: tabonuco, palo colorado, dwarf and sierra palm. The five endemic species are restricted to the palo colorado and/or the dwarf forests. The palo colorado association is found at elevations greater than 600 meters and covers approximately 17 percent of the Caribbean National Forest. It derives its name from the polo colorado tree (*Cyrilla racemiflora*) which is dominant in this forest type. The dwarf or elfin association is found on the summits of mountains at elevations greater than 750 meters and covers only 2 percent of the Forest. This forest is composed of dense stands of short, small diameter, twisted trees and shrubs and the forest floor is covered with mosses and epiphytes. Relative humidity ranges from 95 to 100 percent and annual precipitation from 313 to 450 centimeters. Temperatures range from 11.5° to 32.5 °C throughout the year, with a mean annual temperature of 21 °C (Brown et al., 1983).

Callicarpa ampla, Styrax portoricensis and *Ternstroemia luquillensis*, and *T. subsessilis* were recommended for Federal listing by the Smithsonian Institution (Ayensu and DeFilipps, 1979). The species were included among the plants being considered as endangered or threatened species by the Service, as published in the **Federal Register** (45 FR 82480) dated December 15, 1980; the November 28, 1983, update (48 FR 53680) of the 1980 notice; and the September 27, 1985, revised notice (50 FR 39526). The species were designated category 1 (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in each of the three notices. *Ilex sintenisii* has been ranked as likely to go extinct in 5 to 10 years (Priority B) by the Center for Plant Conservation. It is considered to be a critical plant by the Natural Heritage Program of the Puerto Rico Department of Natural Resources.

In a notice published in the **Federal Register** on February 15, 1983 (48 FR 6752), the Service reported the earlier acceptance of the new taxa in the Smithsonian's 1978 book as under petition within the context of Section 4(b)(3)(A) of the Act, as amended in 1982. The Service subsequently found that listing *Callicarpa ampla, Styrax portoricensis, Ternstroemia luquillensis*, and *T. subsessilis* was warranted but precluded by other pending listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. This proposed rule constitutes the final 1-year finding in accordance with Section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *Callicarpa ampla* Schauer, *Styrax portoricensis* Krug & Urban, *Ternstroemia luquillensis* Krug & Urban, *T. subsessilis* (Britton) Kubuski, and *Ilex sintenisii* (Urban) Britton are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range.

Although all five of these species are found only within the Caribbean National Forest, which is managed by the U.S. Forest Service, forest management practices such as the establishment and maintenance of plantations, selective cutting, trail maintenance, and shelter construction may affect these trees. The destruction of the dwarf or elfin forests for the construction and/or expansion of communication facilities by the U.S. Navy and private entities also continues to be a problem. A proposal for expansion of the Navy facilities on Pico del Este is currently under consideration. Individuals of *Callicarpa ampla* are found along Road #191, proposed for reconstruction and reopening in the near future. In addition, the extreme rarity of all these species makes the loss of any one individual even more critical.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Plant collecting is prohibited in the Caribbean National Forest; however, remote areas are difficult to monitor on a regular basis. The ornamental potential of these species may result in taking in the future.

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of this species.

D. The Inadequacy of Existing Regulatory Mechanisms

The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Callicarpa ampla, Styrax portoricensis, Ternstroemia luquillensis, T. subsessilis,* and *Ilex sintenisii* are not yet on the Commonwealth list. Federal listing would provide immediate protection and, if the species are ultimately placed on the Commonwealth list, would enhance their protection and possibilities for funding needed research.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Probably the most important factor affecting *Callicarpa ampla, Styrax portoricensis, Ternstroemia luquillensis, T. subsessilis,* and *Ilex sintenisii* in Puerto Rico is their limited distribution. Hurricane Hugo recently devastated the Caribbean National Forest, causing defoliation and breaking branches on numerous individuals. Because so few individuals are known to occur the risk of extinction is extremely high.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Callicarpa ampla, Styrax portoricensis, Ternstroemia luquillensis, T. subsessilis,* and *Ilex sintenisii* as endangered. Forest management practices such as establishment of recreation areas and plantations, road construction, selective cutting, trail construction and maintenance may dramatically affect all these species. The impacts of hurricane damage may be devastating. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for this species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for these species at this time. The number of individuals of *Callicarpa ampla, Styrax portoricensis, Ternstroemia luquillensis, T subsessilis,* and *Ilex sintenisii* are sufficiently small that vandalism and collection could seriously affect the survival of these species. Publication of critical habitat descriptions and maps in the **Federal Register** would increase the likelihood of such activities. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. All involved parties have been notified of the location and importance of protecting these species' habitats. Protection of these species' habitats will also be addressed through the recovery process and through the section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. No critical habitat is being proposed for these five species, as discussed above. Federal involvement relates to activities to be conducted by the U.S. Forest Service in the Caribbean National Forest.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal tresspass law. Certain exceptions apply to agents of the Service and Commonwealth conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for these five species will ever be sought or issued, since the species are not known to be in cultivation and are uncommon in the wild. Requests for copies of the regulations on listed plants and inquiries regarding Federal prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Callicarpa ampla, Styrax portoricensis, Ternstroemia luquillensis, T. subsessilis,* and *Ilex sintenisii;*

(2) The location of any additional populations of these five species, and the reasons why any habitat should or

should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the subject areas and their possible impacts on any of these five species.

Final promulgation of the regulation on *Callicarpa ampla, Styrax portoricensis, Ternstroemia luquillensis, T. subsessilis,* and *Ilex sintenisii* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the publication date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References

Ayensu, E. S., and R. A. Defilipps. 1978. Endangered and threatened plants of the United States. Smithsonian Institution and World Wildlife Fund. Washington, DC xv + 403 pp.

Brown, S., A. E. Lugo, S. Silander, and L. Liegel. 1983. Research history and opportunities in the Luquillo Experimental Forest. General Technical Report SO–44. U.S. Department of Agriculture, Forest Service, Southern Forest Experiment Station, New Orleans, Louisiana, 128 pp.

Little, E. L., Jr., R. O. Woodbury, and F. H. Wadsworth. 1974. Trees of Puerto Rico and the Virgin Islands, second volume. Agriculture Handbook No. 449. U.S. Department of Agriculture, Forest Service, Washington, DC 1024 pp.

Liogier, H. A., and L. F. Martorell. 1982. Flora of Puerto Rico and adjacent islands: a systematic synopsis. University of Puerto Rico, Río Piedras, Puerto Rico. 342 pp.

Vivaldi, J. L. and R. O. Woodbury, 1981. Status report on *Callicarpa ampla* Shauer. Submitted to U.S. Fish and Wildlife Service, Atlanta, Georgia, 41 pp.

Vivaldi, J. L., R. O. Woodbury, and H. Diaz-Soltero. 1981a. Status report on *Styrax portoricensis* Krug & Urban. Submitted to U.S. Fish and Wildlife Service, Atlanta, Georgia. 28 pp.

Vivaldi, J. L., R. O. Woodbury, and H. Diaz-Soltero. 1981b. Status report on *Ternstroemia luquillensis* Krug & Urban. Submitted to U.S. Fish and Wildlife Service, Atlanta, Georgia. 39 pp.

Vivaldi, J. L., R. O. Woodbury, and H. Diaz-Soltero. 1981c. Status report on *Ternstroemia subsessilis* (Britton) Kobuski. Submitted to U.S. Fish and Wildlife Service, Atlanta, Georgia. 41 pp.

Authors

The primary authors of this proposed rule are Ms. Marelisa Rivera and Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625. 100 Stat. 3500; unless otherwise noted.

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under Aquifoliaceae, Styracaceae, Theaceae, Verbenaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Aquifoliaceae—Holly family:						
*	*	*	*	*	*	
Ilex sintenisii	None	U.S.A. (PR)	E		NA	NA.
*	*	*	*	*	*	
Styracaceae—Styrax family:						
*	*	*	*	*	*	
Styrax portoricensis	Palo de jazmin	U.S.A. (PR)	E		NA	NA.
*	*	*	*	*	*	
Theaceae—Tea family:						
Ternstroemia luquillensis	Palo colorado	U.S.A. (PR)	E		NA	NA.
Ternstoremia subsessilis	None	U.S.A. (PR)	E		NA	NA.
*	*	*	*	*	*	
Verbenaceae—Verbena family:						
*	*	*	*	*	*	
Callicarpa ampla	Capa rosa	U.S.A. (PR)	E		NA	NA.
*	*	*	*	*	*	

Dated: April 1, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 91–9194 Filed 4–18–91; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 56, No. 76
Friday, April 19, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

National Marketing Quota for Cigar-Filler (Type 46) Tobacco

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA).

ACTION: Notice of determination.

SUMMARY: The purpose of this notice is to affirm the determinations which were made by the Secretary of Agriculture on March 1, 1991, with respect to the amount of the national marketing quota for cigar-filler (type 46) tobacco for the 1991–92 marketing year as required by the Agricultural Adjustment Act of 1938, as amended. In addition to other determinations, the Secretary declared a zero quota for cigar-filler (type 46) tobacco for the 1991–92 marketing year.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Robert Tarczy, Agricultural Economist, Commodity Analysis Division, ASCS, USDA, room 3736–South Building, P.O. Box 2415, Washington, DC 20013, (202) 447–8839.

SUPPLEMENTAL INFORMATION: This notice has been reviewed under USDA procedures established to implement Executive Order 12291 and Department Regulation 1512–1 and has been classified as "not major." The matters under consideration will not result in: (1) An annual effect on the economy of $100 million or more, (2) a major increase in costs for consumers, individual industries, Federal, State or local governments or geographical regions, or (3) significant adverse effects on competition, employment, investment, productivity, innovation, the environment or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program that this notice applies to are: Title—Commodity Loan and Purchases, Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Agricultural Stabilization and Conservation Service (ASCS) is not required by 5 U.S.C. 553 or any provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this notice.

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

In accordance with section 312 of the Agricultural Adjustment Act of 1938, as amended (the Act), the Secretary of Agriculture is required to determine and announce marketing quotas for cigar-filler (type 46) tobacco. In accordance with this Act, it is not possible to announce a national marketing quota greater than zero. Accordingly, no other option may be considered with respect to the announcement of such quota for the 1991–92 marketing year. Accordingly, no Regulatory Impact Analysis will be prepared.

Producers of cigar-filler tobacco approved marketing quotas for the 1989–90, 1990–91, and 1991–92 marketing years in a referendum held March 29, 1989.

Definitions

Section 301(b) of the Act also defines the "total supply" of cigar-filler (type 46) tobacco as the carryover at the beginning of the current marketing year (October 1, 1990) plus the estimated 1990 production in the United States. Therefore, the total supply of cigar-filler (type 46) tobacco for the 1990–91 marketing year is 3.2 million pounds based on beginning stocks of 3.2 million pounds and 1990 production of 0.0 pounds.

Section 301(b) of the Act also defines the reserve supply level as the normal supply plus 5 percent thereof. The normal supply is defined as a normal year's domestic consumption and exports, plus 175 percent of a normal year's domestic consumption plus 65 percent of a normal year's exports.

A normal year's domestic consumption is defined as the yearly average quantity produced in the United States and consumed in the United States during the 10 marketing years immediately preceding the marketing year in which such consumption is determined, adjusted for current trends in such consumption. A normal year's exports is defined as the yearly average quantity produced in and exported from the United States during the 10 marketing years immediately preceding the marketing year in which such exports are determined, adjusted for current trends in such exports.

The yearly average quantity of cigar-filler (type 46) tobacco produced in the United States which is estimated to have been consumed in the United States during the 10 marketing years preceding the 1990–91 marketing year was approximately 1.0 million pounds. None was exported during this time.

Only 0.1 million pounds were sold during the 1989–90 marketing year. In addition, virtually no market currently exists for type 46 tobacco that is priced at or above the price support level. Accordingly, a normal year's domestic consumption has been set at 0.1 million pounds while a normal year's exports have been set at 0.0 million pounds. Application of the formula prescribed by section 301(b)(14)(B) of the Act results in a reserve supply level of 0.3 million pounds.

Manufacturers and dealers reported stocks of cigar-filler (type 46) tobacco held on October 1, 1990, of 3.2 million pounds. The 1990 cigar-filler (type 46) tobacco crop is estimated to be nil. Therefore, the total supply of cigar-filler (type 46) tobacco for the 1990–91 marketing year is 3.2 million pounds. During the 1990–91 marketing year, it is estimated that disappearance will total approximately 0.1 million pounds. By deducting this disappearance from the total supply, a carryover of 3.1 million pounds at the beginning of the 1991–92 marketing year is obtained.

The estimated carryover at the beginning of the 1991–92 marketing year exceeds the reserve supply level. Thus, the quantity of cigar/filler (type 46) tobacco which may be marketed during the 1991–92 marketing year is zero.

In accordance with section 312(b) of the Act, the 1991–92 national marketing quota for cigar-filler (type 46) tobacco is zero. Accordingly, the national acreage allotment for such tobacco is zero.

Pursuant to the provisions of section 313(g) of the Act, the national acreage factor is 0.0.

Accordingly, the following determinations announced by the Secretary of Agriculture on March 1, 1991, are affirmed:

Determinations 1991–92 Marketing Year

For cigar-filler (type 46) tobacco for the marketing year beginning October 1, 1991:

(a) *Reserve supply level.* The reserve supply level for cigar-filler (type 46) tobacco for the 1991–92 marketing year is 0.3 million pounds.

(b) *Total supply.* The total supply of cigar-filler (type 46) tobacco for the marketing year beginning October 1, 1990, is 3.2 million pounds.

(c) *Carryover.* The estimated carryover of cigar-filler (type 46) tobacco for the marketing year beginning October 1, 1991, is 3.1 million period.

(d) *National marketing quota.* Because the estimated carryover at the beginning of the 1991–92 marketing year exceeds the reserve supply level, the quantity of cigar-filler (type 46) tobacco which may be marketed during the 1991–92 marketing year is zero.

(e) *National acreage allotment.* The national acreage allotment is 0.0 acres.

(f) *National acreage factor.* The national acreage factor for use in determining farm acreage allotment is 0.0.

Authority: 7 U.S.C. 1301, 1312, 1313, 1375.

Signed at Washington, DC on April 11, 1991.

Keith D. Bjerke,

Administrator, Agricultural Stablization and Conservation Service.

[FR Coc. 91–9257 Filed 4–18–91; 8:45 am]

BILLING CODE 3410–05–M

Commodity Credit Corporation

1991 Price Support Levels for Fire-Cured (Type 21), Fire-Cured (Types 22–23), Dark Air-Cured (Types 35–36), Virginia Sun-Cured (Type 37), Cigar-Filler and Binder (Types 42–44, 53–55) and Cigar-Filler (Type 46) Tobaccos

AGENCY: Commodity Credit Corporation (CCC), USDA.

ACTION: Notice of determination of 1991 price support levels for six kinds of tobacco.

SUMMARY: This notice sets forth the levels of price support for fire-cured (type 21), (2) fire-cured (types 22–23), (3) dark air-cured (types 35–36), (4) Virginia sun-cured (type 37), (5) cigar-filler and binder (types 42–44; 53–55), and (6) cigar-filler (type 46) kinds of tobacco for the 1991 marketing year. The levels of price support for these kinds of tobacco are required to be determined under the provisions of section 106 of the Agricultural Act of 1949, as amended.

EFFECTIVE DATE: March 1, 1991.

FOR FURTHER INFORMATION CONTACT: Robert H. Miller, (202) 447–8839 or Kenneth Robison, (202) 447–7477. A Final Regulatory Impact Analysis describing the options considered in developing this notice and the impact of implementing each option is available on request from Mr. Robison.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation 1512–1, and has been classified as "not major." The provisions of this notice will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local Governments, or geographical regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, the environment, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies are: Title—Commodity Loans and Purchases; Number—10.051, as set forth in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of this notice.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983). It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Determination of Levels of Price Support

Price support is required to be made available for each crop of a kind of tobacco for which marketing quotas are in effect or for which marketing quotas have not been disapproved by producers. With respect to the 1991 crop of the six kinds of tobacco which are the subject of this notice, the respective maximum level of support is determined in accordance with section 106 of the Agricultural Act of 1949, as amended (the "Act").

Section 106(f)(6)(A) of the Act provides that the level of support for the 1991 crop of a kind of tobacco shall be the level in cents per pound at which the 1990 crop of such kind of tobacco was supported, plus or minus, respectively, the amount by which (i) the support level for the 1991 crop, as determined under section 106(b) of the Act, is greater or less than (ii) the support level for the 1990 crop, as determined under section 106(b) of the Act, as the difference may be adjusted by the Secretary under section 106(d) of the Act if the support level under clause (i) is greater than the support level under clause (ii).

Accordingly, under section 106(f)(6)(A) of the Act, the support level for the 1991 crop of such kind of tobacco will be the 1990 level, adjusted by the difference between (plus or minus) the 1991 "basic support level" and the 1990 "basic support level."

In addition, section 106(f)(6)(B) of the Act provides that to the extent requested by the board of directors of an association through which price support is made available to producers ("producer association") the Secretary may reduce the support level determined under section 106(f)(6)(A) for any kind of tobacco (except flue-cured and burley) to more accurately reflect the market value and improve the marketability of tobacco. Accordingly, the price support levels for a kind of tobacco which are set forth in this notice could be reduced if such a request is made.

The levels of price support for the 1990 crops of various kinds of tobacco, which were determined in accordance with section 106(f)(6)(A), are as follows:

Kind and type	Support (cents per pound)
Virginia fire-cured, type 21	126.2
KY–TN fire-cured, types 22–23	129.7
Dark air-cured, types 35–36	110.7
Virginia sun-cured, type 37	111.5

Kind and type	Support (cents per pound)
Cigar-filler and binder, types 42–44, 53–55	96.2
Puerto Rican filler, type 46	77.8

Section 106(b) of the Act provides that the "basic support level" for any year is determined by multiplying the support level for the 1959 crop of such kind of tobacco by the ratio of the average of the index of prices paid by farmers including wage rates, interest, and taxes (referred to as the "parity index") for the three previous calendar years to the average index of such prices paid by farmers, including wage rates, interest, and taxes for the 1959 calendar year (298). For the 1991-crop year, the average parity indexes for the three previous years are: 1988—1167; 1989—1221; and 1990—1265. The average of the parity indexes for these years is 1218 and the ratio of the 1988–1990 index to the 1959 index is 4.09. For the 1990-crop year, the average parity indexes used to calculate the 1990 "basic support level" were: 1987—1110; 1988—1165; 1989—1220. The ratio of the 1987–89 index to the 1959 index equaled 3.91. Thus, the "basic support level" for the 1990 and 1991 crops of the various kinds of tobaccos and the annual increase are as shown in the following table:

Kind and type	Basic support level		Increase from 1990 to 1991
	1990	1991	
	Cents per pound		
Virginia fire-cured type 21	151.7	158.7	7.0
Kentucky-Tennessee fire-cured, types 23–23	151.7	158.7	7.0
Dark air-cured, types 35–36	134.9	141.1	6.2
Virginia sun-cured, types 37	134.9	141.1	6.2
Cigar filler and binder, types 42–44, 54–55	111.8	117.0	5.2
Puerto Rican filler, type 46	116.1	121.5	5.4

Section 106(d) of the Act provides that the Secretary of Agriculture may reduce the level of support which would otherwise be established for any grade of such kind of tobacco which the Secretary determines will likely be in excess supply. In addition, the weighted average of the level of support for all eligible grades of such tobacco must, after such reduction, reflect not less than 65 percent of the increase in the support level for such kind of tobacco which would otherwise be established under section 106 of the Act if the support level is higher than the support level for the preceding crop. Before any such reduction is made, the Secretary must consult with the associations handling price support loans and consideration must be given to the supply and anticipated demand of such tobacco, including the effect of such reduction on other kinds of quota tobacco. In determining whether the supply of any grade of any kind of tobacco of a crop will be excessive, the Secretary shall take into consideration the domestic supply, including domestic inventories, the amount of such tobacco pledged as security for price support loans, anticipated domestic and export demand, based on the maturity, uniformity and stalk position of such tobacco.

For Puerto Rican filler (type 46) tobacco, the carryover from the 1990–91 marketing year is estimated to be 3.1 million pounds and the reserve supply level set at 0.3 million pounds, an excess supply situation exists. Because of the excess supply situation and the March 1, 1991, determination of a zero quota for the 1991–92 crop year, zero pounds are eligible to be marketed by a producer without the assessment of a penalty during the 1991–92 marketing year. Even though no Puerto Rican filler production is expected, it will eliminate confusion in future price support calculations to determine a price support level for the 1991–92 marketing year. Because the total supply is well above the reserve supply level for Puerto Rican (type 46) tobacco, the 1991 support level consists of the 1990 level of support increased by 65 percent of the difference between the 1991 "basic support level" and the 1990 "basic support level."

For the 1991 crops, burley and flue-cured support levels were increased by 67 percent of the formula increase to within 12 percent of average market prices. For the remaining five kinds of tobacco, prices are further above the support level, and loan receipts remain low. The supply-use ratios suggest adequate supplies, except for dark air-cured (types 35–36) tobacco, for which supplies are tight. For fire-cured (type 21), fire cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), and cigar filler and binder (types 42–44; 53–55) tobaccos, the 1991 support level for each kind consists of the 1990 level of support increased by the difference between the 1991 "basic support level" and the 1990 "basic support level".

Determinations

Accordingly, the Secretary of Agriculture has determined, in accordance with sections 106(f)(6)(A) and 106(f)(8)(A) of the 1949 Act, the following price support levels for the 1991 crops of Virginia fire-cured (type 21), Kentucky-Tennessee fire-cured (types 22–23), dark air-cured (types 35–36), Virginia sun-cured (type 37), cigar filler and binder (types 42–44, 53–55), and Puerto Rican filler (type 46) tobaccos:

Kind and type	Amount (cents per pound)
Virginia fire-cured, (type 21)	133.2
Kentucky-Tennessee fire-cured, (types 22–23)	136.7
Dark air-cured, (types 35–36)	116.9
Virginia sun-cured, (type 37)	117.7
Cigar-filler and binder, types 42–44, 53–55	101.4
Puerto Rican filler, (type 46)	81.3

Authority: 15 U.S.C. 714b, 714c; 7 U.S.C. 1441, 1445.

Signed at Washington, DC on April 11, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-9258 Filed 4-18-91; 8:45 am]

BILLING CODE 3410-05-M

Forest Service

Wallow Environmental Impact Statement; Ladder and North Trinity Compartments, Trinity and Humboldt Counties, CA

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the USDA Forest Service will prepare an EIS (Environmental Impact Statement) which will analyze timber management and road construction within the Ladder and North Trinity Compartments located on the Lower Trinity Ranger District, Six Rivers National Forest, Trinity and Humboldt Counties, CA. This EIS will combine the analysis areas previously considered under the Tish Tang and Ladder EISs. The Notice of Intent to prepare the Tish Tang EIS was published in **Federal Register** Volume 53, No. 170, on September 1, 1988. The Notice of Intent to prepare the Ladder EIS was published in **Federal Register** Volume 55, No. 203, on October 19, 1990. The Forest Service gives notice of the full environmental analysis and decision making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Several public meetings have already been conducted. The District is reviewing the comments received to date. Any additional comments must be received by August 30, 1991 to be considered in the DEIS (Draft Environmental Impact Statement).

ADDRESSES: Submit written comments and suggestions to Lawrence Cabodi, District Ranger, Lower Trinity Ranger District, P.O. Box 68, Willow Creek, CA 95573.

FOR FURTHER INFORMATION CONTACT: Judith McHugh, District Hydrologist, Lower Trinity Ranger District, P.O. Box 68, Willow Creek, CA 95573, phone (916) 629-2118 or Julie Ranieri, Environmental Coordinator, Six Rivers National Forest, 500 Fifth Street, Eureka, CA 95501-10033, phone (707) 442-1721.

SUPPLEMENTARY INFORMATION: The Ladder and North Trinity Compartments have several issues in common: Road access, historical and contemporary Native American use, water quality, soils concerns and wildlife issues. The Forest Supervisor has therefore decided that this EIS will combine the analysis of these areas. In preparing the EIS, the Forest Service will identify and consider a range of alternatives, including the 'No Action' alternative. Other alternatives will consider varying amounts of timber harvesting, road construction, and resource enhancement projects.

Public participation has been especially important during this analysis. The first opportunity was during the initial scoping process (40 CFR 1501.7). Several meetings have been conducted to date, including one held in Willow Creek, CA on November 28, 1990 for the Ladder Compartment EIS. The Forest Service has asked for information, comments and assistance from Federal, State and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the DEIS. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).

James L. Davis, Jr., Forest Supervisor, Six Rivers National Forest, is the Responsible Official.

The DEIS is expected to be filed with the EPA and to be available for public review by November 1991. At that time EPA will publish a notice of availability of the DEIS in the **Federal Register.**

The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency's Notice of Availability appears in the **Federal Register.** It is very important that those interested in the management of the Ladder and North Trinity Compartments participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions, *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the FEIS (Final Environmental Impact Statement), *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends for the DEIS, the comments received will be analyzed and considered by the Forest Service in the preparation of the FEIS, scheduled to be completed by March 1992. In the FEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosure of environmental consequences discussed in the EIS and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsibile official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal number 36 CFR part 217.

Dated: April 8, 1991.

George A. Lottritz,

Timber/Fire Management Officer.

[FR Doc. 91-9168 Filed 4-18-91; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 20-91; Foreign-Trade Zone 141]

Monroe County, NY; Request for Manufacturing Authority for Sayett Technology Plant (Computer Projector Displays)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Country of Monroe, New York, grantee of FTZ 141, on behalf of Sayett Technology Inc., requesting authority for export manufacturing activity within FTZ 141, Monroe County, New York. It was filed on April 9, 1991.

Sayett designs and produces liquid crystal projector display pads (zone projector arrays) which are used to transfer personal computer screen images to overhead projectors. The pad,

to which the image is transferred, fits on the overhead projector which further transfers the image to a large screen. Some of the components used to produce the projector display units are sourced abroad, including liquid crystal displays, cables, transformers, and keypads.

Zone procedures would be used for the company's export production, allowing it to avoid Customs duties on reexported components, including liquid crystal displays, which are currently subject to an antidumping investigation. The application indicates that zone savings would help the plant improve its international competitiveness.

Comments on the application are invited in writing from interested parties. They should be addressed to the Executive Secretary at the address below on or before June 4, 1991.

A copy of the application is available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., room 4213, Washington, DC 20230.

Dated: April 12, 1991.

John J. Da Ponte, Jr.,
Executive Secretary.

[FR Doc. 91-9205 Filed 4-8-91; 8:45 am]
BILLING CODE 3510-DS-M

[Order No. 518]

Approval for Expansion of Foreign-Trade Zone 45, Portland, OR

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), and the Foreign-Trade Zones Board Regulations (15 CFR part 400), the Foreign-Trade Zones Board (the Board) adopts the following Resolution and Order:

Whereas, The Port of Portland, Oregon, Grantee of Foeign-Trade Zone No. 45, has applied to the Board for authority to expand its general-purpose zone at seven sites and for manufacturing authority at the Portland Ship Repair Yard site in Multnomah County, within the Portland Customs port of entry;

Whereas, The application was accepted for filing January 11, 1990, and notice inviting public comment was given in the **Federal Register** on January 22, 1990 (Docket No. 1-90, 55 FR 2123);

Whereas, An examiners committee has investigated the application in accordance withe the Board's regulations and recommends approval;

Whereas, The expansion is necessary to improve and expand zone services in the Portland, Oregon, area; and,

Whereas, The Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, The Board hereby orders:

That the Grantee is authorized to expand the zone in accordance with the application filed on January 11, 1990. The grant includes manufacturing authority for the Portland Ship Repair Yard Site, and the Grantee shall notify the Board for approval prior to the commencement of any other manufacturing or assembly operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the Army District Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 5th day of April, 1991.

Eric I. Garfinkel,
Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.
Executive Secretary.

[FR Doc. 91-9208 Filed 4-18-91; 8:45 am]
BILLING CODE 3510-DS-M

[Docket 19-91; Foreign-Trade Subzone 78A]

Nissan Auto/Truck Plant, Smyrna, TN; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Metropolitan Nashville Port Authority, grantee of FTZ 78 and Subzone 78A, at the automobile and pickup truck manufacturing plant of Nissan Motor Manufacturing Corporation U.S.A., located in Smyrna, Tennessee, requesting authority to expand the subzone and the scope of manufacturing authority. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 8, 1991.

Subzone 78A was approved in 1982 for the manufacture of pickup trucks (Board Order 190, 47 FR 16191, 4/12/82), and the scope of manufacturing authority was expanded to include automobiles in 1984 (Board Order 272, 49 FR 35395, 9/7/84). Plant operations include the assembly of some 250,000 vehicles annually and the assembly of certain components such as engines and axles for those vehicles.

Nissan is now planning to expand operations at the Smyrna plant and requests that its subzone authority be extended to include the changes. The company proposes to expand its physical plant onto a 179-acre parcel adjacent to the existing 825-acre plant. It also plans to expand production to add a line for a new model (mid-sized sedan). Production capacity would increase to some 450,000 units per year. In addition, the company is planning to produce engines, body and other subassemblies for a Nissan/Ford van that will be assembled at an existing Ford facility.

The new operations will use foreign sourced materials and components similar to those used in existing production, including engines and parts, steel, and components for drivetrain, steering, braking, suspension and electrical systems, as well as body parts, accessories, air conditioning equipment, wheels and tires. The application indicates that the value of foreign material and components will continue at the present level (currently, about 60% of total material/component value is foreign). Specific items to be sourced from abroad for the new production include engine parts, transmissions, steel, pumps, fasteners, brake parts, electrical equipment, signal equipment and speedometer parts.

Zone procedures would exempt Nissan from Customs duty payments on foreign parts that are used in production for export. On domestic sales, it would be able to choose the finished auto duty rate (2.5%). On shipments to the other auto assembly subzone duties could be paid when the finished vehicle leaves the plant and that company could choose the finished auto duty rate. The duty rates on the foreign components range from zero to 9.5 percent.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Joel Mish, District Director, U.S. Customs Service, South Central Region, 423 Canal Street, suite 337, New Orleans, LA 70130-2341; and, Colonel James P. King, District Engineer, U.S. Army Engineer District Nashville, P.O. Box 1070, Nashville, TN 37202-1070.

Comments concerning the proposed subzone expansion are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below on or before June 3, 1991.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, Parkway Towers, suite 114, 404 James Robertson Parkway, Nashville, TN 37219–1505.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., room 4213 Washington, DC 20230.

Dated: April 12, 1991.

John J. Da Ponte Jr.

Executive Secretary.

[FR Doc. 91–9206 Filed 4–18–91; 8:45 am]

BILLING CODE 3510–DS–M

International Trade Administration

[A–122–047]

Elemental Sulphur From Canada: Final Results of Antidumping Duty Administrative Review and Revocation in Part

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: On February 7, 1991, the Department of Commerce published the preliminary results of its antidumping duty administrative review and intent to revoke in part the antidumping finding on elemental sulphur from Canada. The review covers two producers and/or exporters of elemental sulphur to the United States during the period December 1, 1988, through November 30, 1989.

Our final results are unchanged from the preliminary results, and we are revoking the antidumping finding in part with respect to one of the companies.

EFFECTIVE DATE: April 19, 1991.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Hager or Elizabeth A. Graham, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–5055 and 377–4105, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On February 7, 1991, the Department of Commerce ("the Department") published in the **Federal Register** (56 FR 4970) the preliminary results of the antidumping duty administrative review and intent to revoke in part the antidumping finding on elemental sulphur from Canada (38 FR 35655, December 17, 1973). We conducted verification of Petro-Canada Resources' ("Petro-Canada") response from February 27, 1991, to March 1, 1991. At the Department's request, on March 8, 1991, counsel for Petro-Canada submitted information on two expenses based on findings at verification. The Department has received no comments concerning this administrative review.

We have now completed the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended ("the Act").

Scope of the Review

Imports covered by this review are shipments of elemental sulphur from Canada. Through December 31, 1988, elemental sulphur was classifiable under item 415.4500 of the Tariff Schedules of the United States Annotated (TSUSA). Thereafter, this merchandise is classifiable under Harmonized Tariff Schedule (HTS) item 2501.01.00. The TSUSA and HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Review Period

The review period is December 1, 1988, through November 30, 1989.

United States Price

For both Sulco Chemical Ltd. ("Sulco") and Petro-Canada, we based the United States price on purchase price, in accordance with section 772(b) of the Act, because all sales used for purposes of our analysis were made directly to unrelated parties prior to importation into the United States.

Petro-Canada

We calculated purchase price based on f.o.b. refinery prices to unrelated purchasers in the United States. At verification, Petro-Canada officials explained that they failed to report in their responses two expenses incurred by the company for U.S. rail car shipments. These expenses include a Customs user fee and a tank car loading fee. We made deductions, where appropriate, for these two expenses. Based on our findings at verification, we adjusted the credit expense reported to account for a minor clerical error in Petro-Canada's short-term interest rate.

Sulco

We calculated purchase price based on either f.o.b. refinery prices with freight charged or f.o.b. delivered prices with freight included in the price. We made deductions, where appropriate, for inland freight, foreign brokerage and handling and demurrage.

Foreign Market Value

In calculating foreign market value, the Department used home market prices as defined in section 773 of the Act.

Petro-Canada

Home market prices were based on f.o.b. refinery prices to unrelated purchasers in the home market. We made adjustments, where appropriate, for differences in credit in accordance with 19 CFR 353.56.

Petro-Canada reported certain sales made to a broker as sales to the United States. In our preliminary determination, we reclassified these sales as home market sales because we had no reason to believe that Petro-Canada knew that the final destination of these sales was, in fact, the United States. Information gathered at verification confirmed that Petro-Canada did not know the final destination of these sales and, therefore, we have continued to treat these sales as home market sales.

Sulco

We calculated home market price on either f.o.b. refinery prices with freight charged or f.o.b. delivered prices with freight included in the price. We made deductions, where appropriate, for inland freight and demurrage. We made adjustments, where appropriate, for differences in credit in accordance with 19 CFR 353.56.

Final Results of Review

Our final results of review are unchanged from those presented in the notice of preliminary results of review, and we determine that the following margins exist for the period December 1, 1988, through November 30, 1989:

Manufacturer/exporter	Margin (percent)
Petro-Canada	0.00
Sulco	0.00

Because these margins are zero, the Department will instruct the Customs Service to assess no antidumping duties on either Petro-Canada or Sulco. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, as provided for by section 751(a)(1) of the Tariff Act, no cash deposit of estimated antidumping duties shall be required for Sulco. For

any shipments of this merchandise produced or exported by the remaining known producers and/exporters not covered in this review, the cash deposit will continue to be at the rate published in the final results of the last administrative review for such firms. For any future entries of this merchandise from a new producer and/or exporter, not covered in this or prior administrative reviews, whose first shipments occurred after November 30, 1989, and who is unrelated to the reviewed firms or any previously reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Canadian elemental sulphur entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative review.

Revocation in Part

For the reasons set forth in the preliminary results, and because we are satisfied that there is no likelihood of resumption of sales at less than fair value, we revoke in part the antidumping finding on elemental sulphur from Canada. This partial revocation applies to all unliquidated entries of this merchandise exported by Petro-Canada on or after December 1, 1989. The Department shall instruct the Customs Service to terminate suspension of liquidation of entries of sulphur exports by Petro-Canada.

This administrative review, revocation in part, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1)(c)), 19 CFR 353.54 (1990), and 19 CFR 353.22 (1990).

Dated: April 12, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-9207 Filed 4-18-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-015]

Television Receivers, Monochrome and Color, From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 30, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping finding on television receivers, monochrome and color, from Japan. The review covers one manufacturer/exporter of this merchandise to the United States, Sharp, and the period March 1, 1987 through February 29, 1988.

We gave interested parties an opportunity to comment on our preliminary results. At Sharp's request we held a hearing on March 8, 1991.

Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the final results. The final margin is 38.26 percent.

EFFECTIVE DATES: April 19, 1991.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-3601.

SUPPLEMENTARY INFORMATION:

Background

On January 30, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 3449) the preliminary results of its antidumping duty administrative review of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). We have now completed this administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of television receiving sets, monochrome and color, from Japan. Television receivers include, but are not limited to, units known as projection televisions, receiver monitors, and kits (containing all parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units, and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image.

During the review period, television receivers, monochrome and color, were classifiable under item numbers 684.9230, 684.9232, 684.9234, 684.9236, 684.9238, 684.9240, 684.9245, 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, and 684.9655 of the Tariff Schedules of the United States Annotated (TSUSA). The merchandise is currently classifiable under item numbers 8528.10.80 and 8528.20.00 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. At Sharp's request, we held a public hearing on March 8, 1991. We received timely comments from Sharp and two domestic interested parties, Zenith Electronics Corp. (Zenith) and the Unions (the United Electrical Workers of America, Independent; the International Brotherhood of Electrical Workers; the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO, and the Industrial Union Department, AFL-CIO). We have corrected the following programming errors in our calculations for the ninth administrative review for Sharp: the omission of programming language to deduct from foreign market value (FMV) certain discounts and rebates, direct selling expenses from constructed value (CV), indirect selling and royalty expenses in our exporter's sales price (ESP) calculations, and commodity taxes from home market (HM) price in our cost-of-production (COP) calculations; the failure to add royalty expenses to FMV in purchase price (PP) comparisons, to include U.S. commissions in the ESP offset, and the inadvertent setting of the ESP cap in CV calculations at zero.

We note that in a footnote to its brief, Zenith listed several issues that had been raised in separate prior proceedings, and that there is nothing else on this record concerning these issues. Zenith explains that it chose not to reargue these issues in this proceeding and merely raised them in the hope that the Department would change its views. Since Zenith decided not to address these issues in this proceeding, we will not address them here either.

All corrections and sources for data used in these final results are clearly noted in our Final Determination Analysis Memorandum.

Comment 1: Zenith argues that the amount of forgiven taxes which is added to United States price (USP) must be capped at the amount of taxes found to be included in FMV, and that no adjustment under the differences-in-circumstances-of-sale (COS) adjustment authority is permissible for the difference between the amount of tax added to USP and the amount of tax included in FMV.

Department's Position: Because our position has not changed on these issues, we incorporate by reference our responses contained in prior final results of administrative reviews of this antidumping finding. (See **Federal Register** notices published on April 6, 1989 (54 FR 13917, Comment 1), August 28, 1989 (54 FR 35517, Comment 3), January 24, 1990 (55 FR 2399, Comment 1), and September 4, 1990 (55 FR 35916, Comment 1).)

Comment 2: As in prior reviews of this finding (August 28, 1989, 54 FR 35517 and September 4, 1990, 55 FR 35920, Comment 10), Sharp argues that the Department should have used Sharp's prices to its distributors to calculate FMV, or, alternatively, that the Department should grant a level-of-trade adjustment for the selling, general, and administrative (SGA) expenses of the distributors, since all of the comparable expenses of Sharp's U.S. distributors were deducted from the resale price in the United States.

Department's Position: In our second administrative review of Sharp (August 28, 1989, 54 FR 35517), we determined that the distributor-to-dealer level in Japan was the appropriate level for price comparisons because there was no clear evidence that home market prices to the company's related distributors were comparable to prices to unrelated parties. See 19 CFR 353.45 (1989). We made the same determination in the third and fourth administrative reviews based on the same lack of evidence (September 4, 1990, Comment 10). Since in this ninth review Sharp submitted no new or additional evidence to support its argument, other than what it submitted in those prior reviews, we have again determined that there is no clear evidence that home market sales to Sharp's related distributors were at arms-length.

As a result, sales in the United States and the home market were compared at the same level of trade, *i.e.*, sales from distributors to dealers. Thus, there is clearly no need for an adjustment for differences in levels of trade. We note that we have included in the ESP offset the indirect SGA expenses incurred by the distributors for the sale of home market models, as is our usual practice and policy.

Comment 3: Sharp argues that the Department must recalculate U.S. indirect expenses to include all the expenses of moving television receivers from factory sites in Japan to U.S. warehouses.

Department's Position: We disagree. As we stated in our last review of Sharp, the statute states that USP shall be reduced by the amount included in such price attributable to any movement charges. We consider charges incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States to be movement expenses, not indirect selling expenses. We deduct movement expenses from the selling prices in the United States (19 U.S.C. 772(d)(2)(A)) and the home market (19 U.S.C. 773(a)) to ensure "apples-to-apples" comparisons. (See 55 FR 35920, September 4, 1990, Comment 13.)

Comment 4: Zenith alleges that the Department's analysis memorandum and the ESP computer program log indicate that the Department did not account for imputed financing expenses incurred by Sharp while the U.S. merchandise was both in transit and in U.S. inventory. Additionally, it is not clear to Zenith whether indirect expenses incurred in Japan for U.S. exports have been accounted for.

Department's Position: We agree and have included in our ESP calculations both the cited imputed financing expenses and indirect expenses incurred in Japan for U.S. exports.

Comment 5: Zenith argues that, to calculate Sharp's U.S. indirect selling expenses, the Department should use the percentage resulting from dividing Sharp's U.S. TV sales value by the U.S. sales value of Sharp's Consumer Electronics Division (CED). Sharp argues that the Department should use the percentage resulting from dividing its U.S. TV sales expenses by the CED's sales expenses.

Department's Position: We disagree with both Zenith and Sharp. As is our standard practice, we used the percentage resulting from dividing total U.S. indirect TV selling expenses by total TV sales value. Both Sharp's and Zenith's proposed methodologies would produce selling expense percentages for all consumer electronic products, rather than just the TVs under review. Our standard practice is more specific to the products under review and, therefore, produces a more accurate TV indirect selling expense percentage.

Comment 6: Sharp argues that not only is the formula used by the Department to determine HM indirect selling expenses unexplained and arbitrary, but also the Department should use the sale-by-sale data Sharp provided.

Department's Position: We used Sharp's own data on HM indirect selling expenses, but limited the deduction to the ESP offset cap. Sharp offered no reason why we should deviate from our standard practice of calculating monthly weighted-average FMVs, which incorporate weighted-average indirect selling expenses, in favor of sale-by-sale indirect selling expenses.

Comment 7: Zenith asserts that the Department erred in failing to remove commodity taxes from HM prices when comparing them to COPs, which do not include such taxes.

Department's Position: We agree and have removed such taxes from HM prices when comparing them to COPs.

Comment 8: Zenith argues that the Department should have included discounts, rebates, and commodity taxes in CV. Zenith states that these are selling expenses that should be included in SGA along with all other selling expenses.

Department's Position: As we stated in the last final results of review of this finding (56 FR 5396, February 11, 1991, Comment 20), we reject Zenith's assertion that discounts and rebates should be included in CV. We consider them to be adjustments to price rather than selling expenses; as a result, we did not include them in our calculation of SGA for CV. Finally, section 773(e)(1) of the Tariff Act does not state that commodity taxes are to be included in CV. Accordingly, we have not included Japanese commodity taxes in our calculation of CV.

Comment 9: Zenith believes the Department erred because, in its investigation of possible home market sales below COP, it did not follow its usual practice of ascertaining on a model-by-model basis which home market sales were above or below COP.

Department's Position: Zenith is incorrect. In fact, we did determine on a model-specific basis whether, and to what extent, home market sales were above or below COP.

Comment 10: Zenith contends that Sharp committed arithmetic errors in calculating certain claimed amounts for home market handling and freight expenses. The Department should eliminate these errors in its own calculations.

Department's Position: We agree and have used the correct figures.

Comment 11: Zenith claims the royalty expense figure the Department used for one home market model is too large, based on Sharp's own data.

Department's Position: We agree and have used the correct figure in our final calculations.

Comment 12: Zenith asserts that in its CV calculations for both PP and ESP sales the Department incorrectly omitted difference-in-merchandise adjustments and export packing.

Department's Position: We agree and have changed our final calculations accordingly.

Comment 13: Zenith asserts that the Department erroneously used the home market model's commodity tax figures as the commodity tax amount for corresponding export models.

Department's Position: We agree and have recalculated the commodity tax amounts to be added to USP in accordance with our standard practice in this case. Specifically, we added the applicable percentage of the unpacked, ex-factory export price to USP and made COS adjustments to FMV for any differences in such taxes.

Comment 14: Zenith claims that the Department used an excessive royalty figure in its FMV calculation for HM model 4CP1.

Department's Position: We agree and have corrected our calculations accordingly.

Comment 15: Zenith argues that Sharp understated the materials cost of its home market model 3CE1. During the period of review, Sharp produced two variations of the model. In preparing its COP calculations, however, Sharp included the average monthly materials cost for only one of the two variations. According to Zenith, the materials cost for model 3CE1 should be derived from the weighted-average cost incurred in producing both of the model's variations.

Department's Position: We agree with Zenith and have recalculated COP for Sharp's model 3CE1. The revised COP includes the weighted-average materials cost for both of the model's two variations.

Comment 16: Zenith alleges that Sharp understated subcontractor costs for the company's home market color televisions (CTVs). For individual CTV models, Sharp calculated subcontractor costs and what the company called "direct" and "indirect" factory overhead costs by multiplying the costs incurred per operating minute by production times for each model. For subcontractor costs, the cost-per-minute figure was derived by dividing subcontractor costs by the total number of minutes Sharp's subcontractors spent working on the company's CTV production. Similarly, Sharp calculated the cost-per-operating minute for its direct and indirect factory overhead by dividing the total of these costs by the combined total of subcontractor minutes plus the minutes incurred by the company's own CTV factory workers.

According to Zenith, the total number of subcontractor minutes that Sharp used to derive its per-minute subcontractor cost is different than the number that the company used to derive its per-minute direct and indirect factory overhead costs. Because of this discrepancy, Zenith argues that the Department should recalculate Sharp's subcontractor costs using the lower of the two figures reported for subcontractor minutes.

Department's Position: We disagree with Zenith and refer to our verification report where we explained the reason behind this alleged discrepancy. As noted in the report, Sharp reported CTV factory overhead costs incurred during the period of review. Consequently, to derive per-minute overhead costs, the company divided its direct and indirect overhead costs by total subcontractor and factory worker minutes incurred during the review period. Sharp's reported subcontractor costs, on the other hand, were taken from the subcontractor's fiscal year period, which ran from April 1, 1987 through March 31, 1988. The subcontractor figure used to derive the per-minute cost was, therefore, the total working minutes incurred by the subcontractors during their fiscal period rather than the review period. We verified Sharp's subcontractor cost allocation methodology and found that it was reasonable.

Comment 17: Sharp argues that, in adjusting COP for the company's home market CTVs, the Department overstated SGA expenses as a percentage of the company's CTV manufacturing costs by mistakenly dividing total corporate SGA expenses by the cost of manufacturing for the company's TV Division. According to Sharp, the Department's calculation should include only the SGA expenses allocable to the company's TV Division, and not the total SGA expenses of the corporation.

Department's Position: We agree with Sharp that the SGA expenses should be those allocable to the TV Division, and we note that our calculation includes only such allocated expenses.

Comment 18: As noted in Zenith's Comment 16 above, Sharp calculated direct and indirect factory overhead costs for its home market CTVs by multiplying the costs incurred per operating minute by production times for each model. Sharp calculated the cost per operating minute for its direct and indirect factory overhead by dividing overhead costs by the combined total of subcontractor minutes plus the minutes incurred by the company's own CTV factory workers.

Ina recalculating COP for Sharp's home market CTV models, the Department removed subcontractor minutes from the company's per-minute overhead cost calculation. As a result, direct and indirect factory overhead costs reallocated between Sharp's home market CTV models.

Sharp argues that the Department's reallocation of the company's factory overhead costs makes an artificial distinction between CTV models that does not reflect how Sharp's overhead functions actually operate. The company adds that the activities included in direct and indirect factory overhead are activities that support both in-house and subcontractor TV production. The allocation of overhead based on subcontractor minutes is, therefore, a more accurate method of capturing these costs.

Department's Position: We disagree with Sharp. The company incurs overhead costs during its portion of the CTV production process. The most accurate allocation of these costs to individual CTV models, therefore, should be based on time spent by Sharp's own factory personnel in producing the televisions. Moreover, our review of the cost categories that Sharp included in its direct and indirect factory overhead did not reveal any particular costs that would be more accurately stated on a per-model basis if allocated using Sharp's methodology.

Comment 19: Sharp contends that the Department's CV calculation is overstated since it is derived from COP before deducting home market packing expenses.

Department's Position: We agree with Sharp that the CV calculation should not include both home market and U.S. packing costs, but only the latter. We have made the appropriate adjustments in our final calculations.

Final Results of the Review

As a result of the comments received and the correction of certain clerical and computer programming errors, we have revised our preliminary results for Sharp, and we determine that the margin for Sharp for the period March 1, 1987 through February 29, 1988, is 38.26 percent.

The Department will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated antidumping duties of 38.26 percent will be required for Sharp. For any shipments of this merchandise

manufactured by Funai, Fujitsu General, Hitachi, Matsushita, Mitsubishi, NEC, Sanyo, Seiko Epson, Toshiba, or Victor, the cash deposit will continue to be the same as the rates published in the final results of the last administrative reviews for these firms (56 FR 5392, February 11, 1991). For any future entries of this merchandise from a new exporter not covered in this or in prior reviews, whose first shipments of the merchandise occurred after February 28, 1990, and who is unrelated to Sharp or any previously reviewed firm, a cash deposit of 38.26 percent shall be required. This rate is being used because completed reviews of later periods involved only non-shippers and firms for which we used BIA. These deposit requirements are effective for all shipments of Japanese television receivers, monochrome or color, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: April 10, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-9203 Filed 4-18-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-588-015]

Television Receivers Monochrome and Color, From Japan; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests by two domestic parties to the proceeding and one respondent, the Department of Commerce has conducted an administrative review of the antidumping finding on television receivers, monchrome and color, from Japan. The review covers one manufacturer/exporter of this merchandise to the United States, Fujitsu General Limited, for the period March 1, 1988, through February 28, 1989. The preliminary results indicate the existence of dumping margins for the respondent during the period.

As a result of the review, the Department has preliminarily dertermined to assess antidumping duties equal to the differences between United States price and foreign market value.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATES: April 19, 1991.

FOR FURTHER INFORMATION CONTACT: Orlando Velez, David Mason, or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On February 11, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 5392) the final results of its last administrative review of the antidumping finding on television receivers, monochrome and color, from Japan (36 FR 4597, March 10, 1971). Two domestic parties to the proceeding, Zenith Corporation and the United Electrical Workers of America, Independent, International Brotherhood of Electrical Workers, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO, and Industrial Union Department, AFL-CIO (the Unions), and certain respondents, including Fujitsu General Limited (FG), requested that we conduct an administrative review for the period March 1, 1988, through February 28, 1989, in accordance with § 353.22(a) of the Department's regulations. On April 28, 1989, we published a notice of initiation of an administrative review for FG, Funai, Hitachi, Matsushita, Mitsubishi, NEC, Sanyo, Victor, Sharp, and Toshiba (54 FR 18320). The Department has already completed the administrative review for several of the parties listed above. At present, the Department is conducting the administrative review for FG pursuant to § 751 of the Tariff Act of 1930 (the Tariff Act). Notice of preliminary results for the remaining parties listed above will be published separately.

On June 27, and December 29, 1989, FG submitted its questionnaire response to the Department. Subsequently, we requested and received supplementary information from FG.

Scope of the Review

Imports covered by this review are shipments of television receivers, monochrome and color, from Japan. Television receivers include, but are not limited to, units known as projection televisions, receiver monitors, and kits (containing all parts necessary to receive a broadcast television signal and produce a video image). Not included are certain monitors not capable of receiving a broadcast signal, certain combination units, and certain subassemblies not containing the components essential for receiving a broadcast television signal and producing a video image. Prior to January 1, 1989, television receivers, monochrome and color, were classifiable under item numbers 684.9230, 684.9232, 684.9234, 684.9236, 684.9238, 684.9240, 684.9245, 684.9246, 684.9248, 684.9250, 684.9252, 684.9253, 684.9255, 684.9256, 684.9258, 684.9262, 684.9263, 684.9265, 684.9270, 684.9275, 684.9400, and 684.9655 of the Tariff Schedules of the United States Annotated (TSUSA). As of January 1, 1989, this merchandise is classifiable under Harmonized Tariff Schedules (HTS) item numbers 8528.10.80, 8528.11.60, and 8528.20.00. The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

This review covers one manufacturer and/or exporter of Japanese television receivers, monochrome and color, for the period March 1, 1988, through February 28, 1989.

United States Price

In calculating United States price for FG, the Department used exporter's sales price (ESP), as defined in section 772 of the Tariff Act. ESP was based on delivered prices to unrelated purchasers in the United States. We made adjustments, as applicable, for ocean freight, marine insurance, U.S. and Japanese inland freight, brokerage fees, discounts, royalties, rebates, commissions to unrelated parties, and the U.S. subsidiary's selling expenses. We accounted for taxes imposed in Japan, but rebated or not collected by reason of exportation of the merchandise to the United States. We also added to the U.S. price the amount of Japanese commodity tax that was not collected by reason of exportation of the merchandise, as specified in section 772(d)(1)(C) of the Tariff Act.

Foreign Market Value

In calculating foreign market value (FMV) for FG, the Department used home market price, and defined in section 773 of the Tariff Act, when sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. The Department made adjustments for physical differences in merchandise, differences in commodity tax amounts, royalties, and packing charges. However, in many instances, FG failed to provide adequate home

market adjustment data, and the Department was unable to make circumstance of sale adjustments.

When there were no such or similar models sold in the home market or in third countries, the Department used constructed value, as defined in section 773 of the Tariff Act. Constructed value includes materials, fabrication, general expenses, profit, and packing. We used: (1) Actual general expenses, since these exceeded the statutory minimum requirement of ten percent of the cost of materials and fabrication, (2) the statutory eight percent for profit, because actual profit was less than the statutory minimum, and (3) the cost of U.S. packing.

Preliminary Results of Review

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margin exists for the period March 1, 1988, through February 28, 1989:

Manufacturer/exporter	Margin (percent)
Fujitsu General Limited	113.14

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs and/or written comments not later than 30 days after the date of publication. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United states price and foreign market value may vary from the percentage stated below. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, a cash deposit of estimated dumping duties of 35.40 percent, based on the margin for FG in the March 1, 1989, through February 28, 1990, review period, will be required for FG. For any future entries of this merchandise from a new exporter not covered in this or in prior reviews, whose first shipments of the merchandise occurred after February 28, 1990, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of 35.40 percent shall be required. These deposit requirements are effective for all shipments of Japanese television receivers, monochrome and color, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review as provided for by section 7519a)(1) of the Tariff Act. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and section 353.22 of the commerce regulations (19 CFR 353.22) (1990).

Dated: April 12, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-9204 Filed 4-18-91; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Caribbean Fishery Management Council's Shallow-Water Reef Fish FMP Committee and the Council's Administrative Committee will hold separate public meetings. The meetings will be conducted in English and will be held on April 22-23, 1991, at the Peace Talk Room of Travelodge, Isla Verde, Puerto. Fishermen and other interested persons are invited to attend. The public will be allowed to submit oral or written statements regarding the agenda items.

The Reef Fish Committee will meet to discuss issues concerning the shallow-water reef fish fishery, on April 22 from 10 a.m., to 5 p.m. There will be simultaneous interpretation services (English-Spanish) at this meeting.

The Council's Administrative Committee will meet on April 23 from 10 a.m., to approximately 3 p.m., to discuss the 1991 budget.

For more information contact Miguel A. Rolon, Executive Director, Caribberan Fishery Management Council, Banco de Ponce Building, suite 1108, Hato Rey, Puerto Rico 00918-2577; telephone (809) 766-5926.

Dated: April 16, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-9196 Filed 4-18-91; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council and its Committees will hold public meetings on April 29-May 3, 1991, at the Town and Country Inn; 2008 Savannah Highway; Charleston, SC.

The Council is scheduled to review a mackerel stock assessment and approve a new total allowable catch (TAC) and bag limits for the 1991-92 fishing year. Public comments will be heard on the proposed mackerel TAC and bag limits before the Council takes action.

The Mackerel Committee will begin developing Amendment #6 to the Mackerel Fishery Management Plan, which may include options to adjust stock assessments from an annual to a semi-annual schedule or to increase percentages of TAC for the recreational sector of the Gulf group king mackerel fishery.

The Council will select options for a wreckfish limited entry program for consideration at public hearings in May and June. Advisory panel members will be selected for the Wreckfish Advisory Panel and for a vacancy on the Snapper-Grouper Advisory Panel.

The Habitat Committee will review harvesting of sargassum and its potential; oil and gas exploration in the southeast, specifically off North Carolina; the issue of Savannah Harbor deepening; and ocean dredged material disposal at a site off Charleston, South Carolina and its association with live bottom habitat. A detailed agenda will be available to the public on or about April 11.

For more information contact Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407, telephone: (803) 571-4366.

Dated: April 16, 1991.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91-9197 Filed 4-18-91; 8:45 am]

BILLING CODE 3510-22-M

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Bottomfish and Seamount Groundfish Plan Team and its Pelagics Plan Team will hold public meetings on April 23–26, 1991, at the Honolulu Laboratory Conference Room, 2570 Dole Street, Honolulu, HI.

The Bottomfish and Seamount Groundfish Plan Team meetings will begin at 9 a.m., on April 23 and April 24, and will adjourn at 5 p.m. The agenda is as follows:

(1) Discuss the 1990 Annual Report, including presentation of materials, discussion of descriptors; analysis of indicators; development of PMT recommendations; time schedule for completion; and other matters. (2) evaluate Main Hawaiian Islands alternative management measures, including a report on scoping sessions; recommendations to the Council; and other matters. (3) discuss a Northwestern Hawaiian Islands limited entry progam, including a review of proposed changes related to limiting access into Mau zone, merging Ho'omalu and Mau zones; and allowing transfer of permits; scoping sessions discussions; biological considerations; PMT recommendations to the Council; and (4) other business.

The Pelagics Plan Team meetings will begin at 9 a.m., on April 25 and April 26, and will adjourn at 5 p.m. The agenda is as follows:

(1) Review the 1989 annual report; (2) discuss preparation of the 1990 annual report, including review of area modules of Hawaii, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, selection and computation of indicators (species-specific catch rates, size class frequencies, economic indicators), division of labor and products delivered to Council staff and target dates, computing indexes for species of major importance in each island area (rather than species "across the board" regardless of their significance locally), and assignments to prepare sections of the 1990 annual report; (3) review draft Amendment #3 to Extend the Longline Moratorium period for 3 years, including Hawaii catch rate and economic indicators, and Plan Team recommendations; and (4) other matters concerning emergency action request for longline area closures, review of Council decisions at its last meeting, discussion of minimum size regulations for Pelagics (Ahi) and yield per recruit reconsiderations, the inclusion of Tuna under the Magnuson Act and other business.

For further information contact Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone; (808) 523–1368.

Dated: April 16, 1991.

Davis S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 91–9195 Filed 4–18–91; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List commodities to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: May 20, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On February 22, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (56 FR 7346) of proposed additions to the Procurement List of the Pearl Harbor Naval Shipyard's requirements for five plastic bags. Comments were received from a current contractor for these bags, who questioned the ability of nonprofit agencies employing persons with severe disabilities to make yellow polyvinyl chloride (PVC) bags with sufficient care to meet their intended use for carrying items that have been exposed to nuclear radiation. The nonprofit agency which will produce this requirement is already making yellow PVC bags for two other naval shipyards, which use them for the same purpose. The Committee has no reasons to question the ability of the nonprofit agency to produce these bags for a third shipyard.

While admitting that this requirement constituted only a small part of its yellow PVC bag business, the contractor expressed concern that addition of other Government requirements for yellow PVC bags to the Procurement List could eventually have a serious impact on the industry. In making its determination that an addition to the Procurement List does not constitute a serious adverse impact on the current or most recent contractor, the Committee takes into account the cumulative impact of earlier additions to the Procurement List upon that contractor. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodities at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to the Procurement List:

Commodities

Bag, Plastic

8105–00–NIB–0016	8″ × 15″
8105–00–NIB–0017	18″ × 24″
8105–00–NIB–0018	12″ × 24″
8105–00–NIB–0019	24″ × 36″
8105–00–NIB–0020	30″ × 40″

(Requirements of the Pearl Harbor Naval Shipyard, Pearl Harbor, HI)

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–9253 Filed 4–18–91; 8:45 am]

BILLING CODE 6820-33-M

Procurement List; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List a commodity and

services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

EFFECTIVE DATE: May 20, 1991.

ADDRESSES: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: On February 22 and March 1, 1991, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (56 FR 7346 and 8749/50) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to produce the commodity and provide the services at a fair market price and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and services listed.

c. The actions will result in authorizing small entities to produce the commodity and provide the services procured by the Government.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Neck Strap, telephone, 5965–00–340–6790

Services

Janitorial/Custodial, Naval Air Station, Whidbey Island, Building 13, Oak Harbor, Washington

Janitorial/Custodial, for the following Casper, Wyoming locations:
Federal Building and U.S. Post Office, 100 E. B Street
Federal Building and U.S. Courthouse, 111 S. Walcott Street

Parts Sorting, Defense Reutilization and Marketing Office—San Antonio, Kelly Air Force Base, Texas

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–9254 Filed 4–18–91; 8:45 am]

BILLING CODE 6820–33–M

Procurement List Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has recieved proposals to add to the procurement list a commodity and services to be furnished by nonprofit agencies employing the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 20, 1991.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing the blind or other severely handicapped.

It is proposed to add the following commodity and services to the procurement list:

Commodity

Canteen, Water, 8465–01–118–8173.

Services

Commissary Warehousing, Kirtland Air Force Base, New Mexico.

Commissary Warehousing, Goodfellow Air Force Base, Texas.

Food Service Attendant, Altus Air Force Base, Oklahoma.

Grounds Maintenance, FAA Airway Facilities Sector, Field Office/Tower, Daytona Beach, Florida.

Janitorial/Custodial, Federal Building & U.S. Courthouse, 1800 Fifth Avenue, North, Birmingham, Alabama.

Janitorial/Custodial, Federal Building, 650 S. Missouri, East St. Louis, Illinois.

Janitorial/Custodial, Federal Building & U.S. Courthouse, 750 S. Missouri, East St. Louis, Illinois.

Janitorial/Custodial, Building 333, 404, 499, 589, 20107, 20160, 20203, 21851 and 21852, Kirtland Air Force Base, New Mexico.

Beverly L. Milkman,

Executive Director.

[FR Doc. 91–9255 Filed 4–18–91; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

The Joint Staff; National Defense University, Board of Visitors; Meeting

AGENCY: National Defense University, Department of Defense.

ACTION: Notice of Meeting.

SUMMARY: The President, National Defense University has scheduled a meeting of the Board of Visitors.

DATES: The meeting will be held between 0800–1200 and 1330–1500 on 3 May 1991.

ADDRESSES: The meeting will be held in the Hill Conference Center of Theodore Roosevelt Hall, Building 61, Fort Lesley J. McNair.

FOR FURTHER INFORMATION CONTACT: The Director, University Plans and Programs, National Defense University, Fort Lesley J. McNair, Washington, DC 20319–6000. To reserve space, interested persons should phone (202) 475–1145.

SUPPLEMENTARY INFORMATION: The agenda will focus on proposals for a Defense Acquisition University, update on NDU components and review of Operation Desert Storm.

Dated: April 15, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–9240 Filed 4–18–91; 8:45 am]

BILLING CODE 3810–01–M

Office of the Secretary

Defense Science Board Task Force on Acquisition Streamlining; Meeting

ACTION: Change in date of Advisory Committee Meeting Notice.

SUMMARY: The meeting of the Defense Science Board Task Force on Advanced Naval Warfare Concepts scheduled for April 16, 1991, at the Center for Naval Analyses, Alexandria, Virginia, as published in the **Federal Register** (Vol. 56, No. 57, Page 12369, Monday, March 25, 1991, FR Doc. 91–6940) has been rescheduled for May 14, 1991.

Dated: April 15, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-9235 Filed 4-18-91; 8:45 am]

BILLING CODE 3810-01-M

National Security Agency/Central Security Service

Privacy Act of 1974; New Record Systems

AGENCY: National Security Agency/Central Security Service, DOD.

ACTION: Amendment to a record system notice.

SUMMARY: The National Security Agency/Central Security Service proposes to amend one record system to its existing inventory of record systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 522a).

DATES: The proposed action will be effective without further notice on May 20, 1991, unless comments are received which would result in a contrary determination.

ADDRESSES: Send comments to Ms. Pat Schuyler, Office of Policy, National Security Agency, Ft. George G. Meade, MD 20755-6000. Telephone (301) 688-6527.

SUPPLEMENTARY INFORMATION: The National Security Agency/Central Security Service record systems notices subject to the Privacy Act of 1974, have been published in the **Federal Register** as follows:

50 FR 22585, May 29, 1985 (DoD compilation, changes follow)
52 FR 36818, Oct. 1, 1987
52 FR 41758, Oct. 30, 1987
55 FR 27871, Jul. 6, 1990
56 FR 9349, Mar. 6, 1991

The amended system is not within the purview of subsection (r) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) which requires the submission of an altered record system report. The specific changes to the records systems being amended are set forth below, followed by the system notice, as amended, in its entirety.

Dated: April 15, 1991

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

GNSA18

System name:

NSA/CSS Operations Files (56 FR 9349, March 6, 1991)

Changes:

* * * * *

Categories of individuals covered by the system:

Delete the sixth line and replace with "information systems security, the"

* * * * *

Retention and disposal:

Delete the fourth line and replace with "historical data are archieved as"

* * * * *

GNSA18

SYSTEM NAME:

NSA/CSS Operations Files.

SYSTEM LOCATION:

National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755-6000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals identified in foreign intelligence or counterintelligence reports and supportive materials, including individuals involved in matters of foreign intelligence interest, information systems security, the compromise of classified information, or terrorism.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include administrative information; biographic information; intelligence requirements, analysis, and reporting; operational records; articles, public-source data, and other published information on individuals and events of interest to NSA/CSS; actual or purported compromises of classified intelligence; countermeasures in connection therewith; and identification of classified source documents and distribution thereof.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947 as amended, 50 U.S.C. 403(d)(3) (Pub. L. 80-253); Executive Order 12333, 3 CFR part 200 (1981); Executive Order 12356; Executive Order 9397; section 506(a), Federal Records Act of 1950 (44 U.S.C. 3101).

PURPOSE(S):

To maintain records on foreign intelligence and counterintelligence matters relating to the mission of the National Security Agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To U.S. Government agencies, and in some instances foreign government agencies or their representatives, to provide foreign intelligence, counterintelligence, and other information.

To U.S. Government officials regarding compromises of classified information including the document(s) apparently compromised, implications of disclosure of intelligence sources and methods, investigative data on compromises, and statistical and substantive analysis of the data.

To any U.S. Government organization in order to facilitate any security, employment, detail, liaison, or contractual decision by any U.S. Government organization.

Records may further be disclosed to agencies involved in the protection of intelligence sources and methods to facilitate such protection and to support intelligence analysis and reporting.

The "Blanket Routine Uses" published at the beginning of NSA/CSS's compilation of record systems also apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape, disk or other computer storage media, computer listings and databases, paper in file folders, audio recordings, microfilm or microfiche.

RETRIEVABILITY:

Information is retrieved by category of information contained therein, including by name, title, Social Security Number, or identification number.

SAFEGUARDS:

For paper, computer printouts, audio recordings, and microfilm—secure limited access facilities, within those facilities secure limited access rooms, and within those rooms lockable containers. Access to information is limited to those individuals specifically authorized and granted access by NSA/CSS regulations. For records on the computer system, access is controlled by passwords or physical protection and limited to authorized personnel only.

RETENTION AND DISPOSAL:

Records are reviewed for retention on a scheduled basis every 120 days to 5 years. Evidential, informational, and historical data are archived as permanent records. All other records are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755-6000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if records about themselves are contained in this record system should address written inquiries to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this record system should address writtten inquiries to the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

CONTESTING RECORD PROCEDURE:

NSA/CSS rules for contesting contents and appealing initial determinations are contained in NSA/CSS Regulation No. 10–35; 32 CFR part 299a; or may be obtained from the Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

RECORD SOURCE CATEGORIES:

Individuals themselves; U.S. agencies and organizations; media, including periodicals, newspapers, and broadcast transcripts; public and classified reporting, intelligence source documents, investigative reports, and correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this file may be exempt pursuant to 5 U.S.C. 552a (k)(1), (k)(2), and (k)(5).

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2) and (3), (c) and (e) and is published in NSA/CSS Regulation No. 10–35 and the Code of Federal Regulations at 32 CFR part 299a.

[FR Doc. 91–9238 Filed 4–18–91; 8:45 am]
BILLING CODE 3810–01–M

Department of the Air Force

Notice of Intent; to Prepare an Environmental Impact Statement for the Deactivation of 150 Minuteman II Missile Sites at Ellsworth AFB, SD

The United States Air Force is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the deactivation of 150 Minuteman II missile sites at Ellsworth AFB, South Dakota.

The National Environmental Policy Act encourages agencies to conduct public scoping meetings to obtain input to assist in determining the nature, extent and scope of the issues and concerns to be addressed in the EIS. The Air Force's public scoping meeting will be held May 7, 1991 at 7 p.m. in the City School Administration Building, 300 6th Street, Rapid City, South Dakota.

The United States Air Force invites comments and suggestions from all interested parties on the scope of the EIS. If concerned persons are not able to attend this scoping meeting, suggestions and comments will be accepted at the address listed, through June 7, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. George Gauger, Environmental Planning, HQ SAC/DEVP, Offutt AFB, NE, 6811–5000, Phone: (402) 294–3684.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–9191 Filed 4–18–91; 8:45 am]
BILLING CODE 3910–01–M

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Ad Hoc Committee Study of Off-Board Sensors—Summer Study 1991 will meet on 6–8 May 91 from 8 a.m. to 5 p.m. at the Space Systems Division, Los Angeles Air Force Base, Los Angeles, California.

The purpose of this meeting is to receive presentations of Air Force projects and programs relevant to the concept using off-board sensors data to support air combat operations. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 91–9256 filed 4–18–91; 8:45 am]
BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

National Advisory Committee on Accreditation and Institutional Eligibility; Meeting

AGENCY: National Advisory Committee on Accreditation and Institutional Eligibility; Education.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the proposed agenda of the National Advisory Committee on Accreditation and Institutional Eligibility. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend this public meeting.

DATES AND TIMES: May 6–7, 1991—8:30 a.m. until 5 p.m.

LOCATION: The Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia 22209, telephone: 703–527–4814.

FOR FURTHER INFORMATION CONTACT: Steven G. Pappas, Executive Director, National Advisory Committee on Accreditation and Institutional Eligibility, U.S. Department of Education, 400 Maryland Avenue, SW., room 3915–ROB#3, Washington, DC 20202–5151.

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Accreditation and Institutional Eligibility is established under section 1205 of Higher Education Act as amended by Public Law 96–374 (20 U.S.C. 1145). The Committee advises the Secretary of Education regarding his responsibility to publish a list of the nationally recognized accrediting agencies and associations, State agencies recognized for the approval of public postsecondary vocational education, and State agencies recognized for the approval of nurse education. The Committee also advises the Secretary of Education on policy matters concerning recognition of accrediting and State approval bodies and institutional eligibility for participation in federally funded programs.

AGENDA

The meeting on May 6–7, 1991 is open to the public. The Advisory Committee will review petitions and interim reports of accrediting agencies and State approval bodies relative to initital or continued recognition by the Secretary of Education. The Committee also will hear presentations by representatives of these petitioning agencies and any third parties who have requested to be heard. The following petitions and interim reports are scheduled for review.

Accrediting Agencies

Petitions for Initial Recognition

1. Accrediting Commission of the American Association of Higher Education in Oriental Medicine (institutions and programs offering master's degrees in traditional Oriental medicine).

Petitions for Renewal of Recognition

2. Accrediting Council on Education in Journalism and Mass Communications (units within institutions offering

professional undergraduate and master's degree programs in journalism and/or mass communications).

3. American Association of Bible Colleges (Bible colleges and institutes offering undergraduate programs).

4. American Dietetic Association (coordinated undergraduate programs in dietetics and post-baccalaureate dietetic internships).

5–7. American Medical Association, Committee on Allied Health Education and Accreditation (CAHEA): in cooperation with—

5. Joint review Committee on Education in Diagnostic Medical Sonography (programs for training diagnostic medical sonographers);

6. Joint Review Committee on Education in Electroneurodiagnostic Technology (programs for training electroneurodiagnostic technologists);

7. Joint Review Committee for Perfusion Education (programs for training perfusionists).

8. Association for Clinical Pastoral Education (basic, advanced and supervisory clinical pastoral education programs).

9. Council on Accreditation of Nurse Anesthesia Educational Programs (generic nurse anesthesia educational programs or schools).

10. Council on Naturopathic Medical Education (programs leading to the N.D. or N.M.D. degree).

11. Liaison Committee on Medical Education of the Council on Medical Education of the American Medical Association and the Executive Council of the Association of American Medical Colleges (programs leading to the M.D. degree).

12. National Accreditation Council for Agencies Serving the Blind and Visually Handicapped (specialized schools for the blind and visually handicapped, including organizations providing postsecondary vocational educational programs that prepare the blind and visually handicapped for employment).

13. National Architectural Accrediting Board (first professional degree programs in architecture).

14. National Association of Schools of Dance (institutions and units within institutions offering degree-granting and non-degree-granting programs in dance and dance-related disciplines).

15. Western Association of Schools and Colleges, Accrediting Commission for Schools (for postsecondary programs conducted at secondary schools, adult schools, vocational skills centers, job corps centers and business-industry schools).

Interim Reports

16. Accrediting Commission on Education for Health Services Administration.

17. National Council for Accreditation of Teacher Education.

18. Society of American Foresters.

State Approval Agencies

Petitions for Initial Recognition

19. Virginia State Department of Education (for approval of public postsecondary vocational education).

Petitions for Renewal of Recognition

20. New Hampshire Nurses Registration Board (for approval of nurse education).

Requests for oral presentations before the Advisory Committee should be submitted to Mr. Pappas (address above) by May 1, 1991. Requests should include the names of all persons seeking an appearance, the organization they represent, and the purpose for which the presentation is requested.

A record will be made of the proceedings of the meeting and will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., (room 3036, ROB#3), Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Authority: 5 U.S.C.A. Appendix 2.

Dated: April 16, 1991.

Michael J. Farrell,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 91–9243 Filed 4–18–91; 8:45 am]

BILLING CODE 4000–01–00

DEPARTMENT OF ENERGY

Availability of Draft Environmental Impact Statement, Siting, Construction and Operation of New Production Reactor Capacity

AGENCY: U.S. Department of Energy.

ACTION: Notice of availability of draft environmental impact statement (EIS) and notice to conduct public hearings on the draft EIS.

SUMMARY: The Department of Energy announces the availability of a draft Environmental Impact Statement (EIS) for the Siting, Construction and Operation of New Production Reactor Capacity (DOE/EIS–0144D). This draft EIS assesses the potential environmental impacts of siting, constructing and operating new production ractor (NPR) capacity proposed to produce tritium for the nation's nuclear weapons program.

The public is invited to review the draft EIS, submit written comments, and attend any of 13 public hearings to present oral comments.

DATES: Written comments to the Department of Energy must be postmarked by June 17, 1991, to ensure consideration in preparation of the final EIS. Comments postmarked after that date will be considered to the extent practicable. Public hearings will be held in five states between May 16 and May 31, 1991, as described in this notice. Individuals desiring to make an oral statement at one of the hearings should preregister by telephone as indicated below, before the deadline indicated below for each hearing, so that the Department may arrange a schedule for presentations. Those who do not wish to preregister may register to speak at the hearings on a first come, first served basis. They will be accommodated to the extent possible.

ADDRESSES: Written comments on the draft EIS should be sent to Office of New Production Reactors, U.S. Department of Energy, "Attention: Draft EIS Comments," Caller Box 6005, Gaithersburg, MD 20877–6005. Requests to present oral comments at the hearing are to be made by telephone only to 1–800–253–3446 between 8:30 a.m. and 8 p.m. Eastern Time, Monday through Friday, and not later than the deadlines given below for each hearing. Requests for copies of the draft EIS, the Summary of the draft EIS, or related fact sheets, and requests for further information should be directed to Dr. Richard W. Englehart, Acting Director, Office of Environment, Office of New Production Reactors, NP–50, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, "Attention: NPR Draft EIS," telephone (202) 586–0297. For general information on the procedures followed by the Department in compliying with the requirements of the National Enviromental Policy Act, contact: Ms. Carol Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, telephone (202) 586–4600.

SUPPLEMENTARY INFORMATION:

I. Previous Notice of Intent

The U.S. Department of Energy published a Notice of Intent to prepare this EIS and to hold scoping meetings on September 16, 1988 (53 FR 36094–36097). This Notice of Intent was amended on

October 25, 1988 (53 FR 43003–43004) and on November 17, 1988 (53 FR 46490).

II. Background Information

Under the Atomic Energy Act to 1954, the U.S. Department of Energy is responsible for producing all nuclear materials for the nation's defense program. The effectiveness of the nation's nuclear deterrent capability depends on the ability to produce and maintain nuclear weapons for national defense purposes. The purpose of the Department's New Production Reactors program is to provide new production reactor capacity in a safe and environmentally sound manner, on an urgent schedule, for an assured supply of tritium to maintain the naiton's nuclear deterrent capability.

III. Scope of Draft EIS

The scope of the draft EIS was established after consideration of comments received during a public scoping period (September 16 through December 15, 1988), which included 13 scoping meetings held from November 10 through December 8, 1988 in Georgia, Idaho, Oregon, South Carolina and Washington. Comments received were addressed in the document entitled *Implemetation Plan for the New Production Reactor Capacity Environmental Impact Statement*, which was published in January 1990.

This draft EIS has been prepared in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended. The proposed action is to provide new capacity to produce tritium safely and reliably, in order to meet the nation's defense requirements well into the 21st century. The draft EIS analyzes this proposed action and its reasonable. alternatives on both programmatic and project-specific levels. On a programmatic level, the draft EIS examines impacts of decisions on:

—Whether to build new tritium production facilities;
—Whether to have available more than one facility at more than one site;
—What size new production capacity should be provided; and
—On what schedule new production capacity should be provided.

On a project-specific level, the draft EIS analyzes the potential environmental impacts of siting, constructing and operating one or more new production reactors and associated support facilities on an urgent schedule (by about the year 2000).

The potential environmental effects of proposed new production reactor capacity are assessed for three alternative sites:

—The Hanford Site near Richland, Washington;
—The Idaho National Engineering Laboratory near Idaho Falls, Idaho; and
—The Savannah River Site near Aiken, South Carolina.

For each site, the potential impacts of the three reactor technology alternatives and related supporting facilities are assessed:

—A heavy-water reactor (HWR);
—A light-water reactor (LWR); and
—A modular high-temperature gas-cooled reactor plant (MHTGR).

The "no action" alternative of continued reliance on existing reactors at the Savannah River Site is analyzed on both the programmatic and project-specific levels.

Earlier in the program, the Department of Energy identified a preferred alternative of building two different reactors, each at a different site. However, the Deapartment no longer has a preferred alternative and therefore does not state a preferred alternative in the draft EIS. In accordance with NEPA, a preferred alternative will be identified in the final EIS. The selection of a preferred alternative will take into account economic, environmental and technical factors as well as comments received on the draft EIS.

At each site and for each technology, as well as for the "no action" alternative, the draft EIS evaluates potential impacts on:

—Air quality.
—Noise levels.
—Surface water and groundwater quality.
—Land use.
—Recreation.
—Visual environment.
—Biotic resources.
—Historical, archaeological and cultural resources.
—Socioeconomics.
—Transportation.
—Waste management.
—Human health and safety.

The draft EIS analyzes impacts for normal plant operations as well as potential accident situations. The draft EIS also describes measures that could be taken to mitigate possible adverse impacts.

IV. Comment Procedures

A. Availability of Draft EIS

Copies of the draft EIS have been distributed to Federal, state and local agencies, organizations, environmental groups, and individuals known to be interested in the proposed action. Additional copies may be obtained by contacting Dr. Richard W. Englehart, Acting Director, Office of Environment, New Production Reactors Program, NP–50, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone (202) 586–0297. Copies of the draft EIS will also be available for inspection at the public hearings, which are listed below.

Copies of the draft EIS, including appendices, and copies of those documents referenced in the draft EIS which are not otherwise readily accessible by the public are available for public inspection at:

Idaho

INEL Technical Library, Public Reading Room, University Place, 1776 Science Center Drive, Idaho Falls, Idaho 83415 (208) 526–1196.

South Carolina

Gregg-Graniteville Library, DOE Documents Collection, University of South Carolina—Aiken, 171 University Parkway, Aiken, South Carolina 29801 (803) 648–6851.

Washington

U.S. Department of Energy Reading Room, 825 Jadwin Avenue, Richland, Washington 99352 (509) 376–8583.

Washington, DC

U.S. Department of Energy, Freedom of Information Reading Room, Forrestal Building, room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–6020.

Copies of the draft EIS, including appendices, are available for public inspection at:

Idaho

Twin Falls Public Library, 434 Second Street East, Twin Falls, Idaho 83301–6397 (208) 733–2965.
Idaho Falls Public Library, 457 Broadway, Idaho Falls, Idaho 83402 (208) 529–1450.
Boise Public Library, Adult Services, 715 S. Capitol Blvd., Boise, Idaho 83702–0610 (208) 384–4023.
Pocatello Public Library, 812 East Clark Street, Pocatello, Idaho 83201–5722 (208) 232–1263.
University of Idaho Library, Document Section, Rayburn Street, Moscow, Idaho 83843 (208) 885–6344.

Georgia

Augusta-Richmond County Public Library, 902 Greene Street, Augusta, Georgia 30901–2294 (404) 821–2600.
CEL Regional Library, 2002 Bull Street, Savannah, Georgia 31499–4301 (912) 234–5127.

Oregon

Portland State University Library, 924 SW Harrison, Portland, Oregon 97207–1151 (503) 725–4735.

South Carolina

Richland County Public Library, 1400 Sumter Street, Columbia, South Carolina 29201–2828 (803) 799–9084.

Washington

Richland Public Library, 955 Northgate, Richland, Washington 99352–3539 (509) 943–9117.

Crosby Library, Gonzaga University, E. 502 Boone Street, Spokane, Washington 99258 (509) 484–2831.

Seattle Public Library, Government Publication Service, 1000 4th Avenue, Seattle, Washington 98104 (206) 386–4177.

B. Written Comments

Interested parties are invited to provide written comments on the draft EIS to the Office of New Production Reactors, U.S. Department of Energy, "Attention: Draft EIS Comments," Caller Box 6005, Gaithersburg, MD 20877–6005. Envelopes must be postmarked no later than June 17, 1991, to ensure consideration in preparation of the final EIS. Late comments will be considered to the extent practicable.

C. Public Hearings

1. Participation Procedure

The public is invited to provide oral comments on the draft EIS to the Department at the public hearings, which are listed below.

So that as many persons as possible may have the opportunity to present comments, five minutes will be allotted to each speaker. All comments will be transcribed by a court reporter, and the official hearing transcripts will be used in preparing the final EIS. Advance registration for presentation of oral comments at the hearings may be made by phoning 1–800–253–3446, between 8:30 a.m. and 8 p.m. Eastern Time, Monday through Friday, not later than the preregistration deadline listed below for each hearing. Please note that no comments will be taken by phone; this toll-free number is in use only for the purpose of scheduling speakers. Those who preregister will be assigned a specific speaking time, which will be confirmed by post card; however, because of uncertainties in attendance, commenters should arrive at the hearing and check in at least one hour before their scheduled speaking time.

Preregistration for the public hearings is encouraged but is not required; commenters may register to speak at the hearings on a first come, first served basis. Commenters registering at the door will be accommodated to the extent possible.

Public hearings for the draft EIS on new production reactor capacity will be held on the dates and at the locations listed below. Times for all hearings are the same (local time): 8:30 a.m. to 12 p.m., 1 p.m. to 5 p.m., and 7 p.m. to 10 p.m.

a. *Idaho Site*

(1) University Place, 1776 Science Center Drive, Idaho Falls, Idaho.
Date: Thursday, May 16, 1991.
Preregistration Deadline: Friday, May 10, 1991.

(2) Quality Inn, 1555 Pocatello Creek Road, Pocatello, Idaho.
Date: Monday, May 20, 1991.
Preregistration Deadline: Tuesday, May 14, 1991.

(3) Best Western Canyon Springs, 1357 Blue Lakes Blvd. North, Twin Falls, Idaho.
Date: Thursday, May 23, 1991.
Preregistration Deadline: Friday, May 17, 1991.

(4) Boise Centre, 850 West Front Street, Boise, Idaho.
Date: Tuesday, May 28, 1991.
Preregistration Deadline: Tuesday, May 21, 1991.

(5) Cavanaugh's Motor Inn, 645 Pullman Road, Moscow, Idaho.
Date: Friday, May 31, 1991.
Preregistration Deadline: Friday, May 24, 1991.

b. *Hanford Site*

(1) Federal Building Auditorium, 825 Jadwin Avenue, Richland, Washington.
Date: Monday, May 20, 1991.
Preregistration Deadline: Tuesday, May 14, 1991.

(2) Spokane Convention Center, West 334 Spokane Falls Boulevard, Spokane, Washington.
Date: Thursday, May 23, 1991.
Preregistration Deadline: Friday, May 17, 1991.

(3) Red Lion Inn/Bellevue Center, 818 112th Avenue, NE., Bellevue, Washington (Seattle Area).
Date: Tuesday, May 28, 1991.
Preregistration Deadline: Tuesday, May 21, 1991.

(4) Bonneville Power Administration Auditorium, 911 NE 11th Street, Portland, Oregon.
Date: Friday, May 31, 1991.
Preregistration Deadline: Friday, May 24, 1991.

c. *Savannah River Site*

(1) Aiken Municipal Center, 214 Park Avenue SW, Aiken, South Carolina.
Date: Tuesday, May 21, 1991.
Preregistration Deadline: Wednesday, May 15, 1991.

(2) Holiday Inn West, 1075 Stevens Creek Road, Augusta, Georgia.
Date: Friday, May 24, 1991.
Preregistration Deadline: Monday, May 20, 1991.

(3) Coastal Georgia Center for Continuing Education, 305 West Broad, Savannah, Georgia.
Date: Tuesday, May 28, 1991.
Preregistration Deadline: Tuesday, May 21, 1991.

(4) National Guard Armory, South Carolina State Area Command, South Carolina Army National Guard, 1225 Bluff Road, Columbia, South Carolina.
Date: Friday, May 31, 1991.
Preregistration Deadline: Friday, May 24, 1991.

2. Conduct of Hearings

The Department of Energy has established basic rules and procedures for conducting the hearings. Rules needed for the orderly conduct of the hearings will be announced by the presiding officer at the start of the hearings. The hearings will not be judicial or evidentiary-type hearings. Clarifying questions regarding statements made at the hearings may be asked by Department of Energy personnel conducting the hearings. There will be no cross-examination of persons presenting statements. A transcript of the hearings will be prepared, and the entire record of each hearing, including the transcript, will be available for inspection at the libraries and reading rooms listed above.

Issued in Washington, DC on April 11, 1991.

Paul L. Ziemer,

Assistant Secretary, Environment, Safety and Health

[FR Doc. 91–9157 Filed 4–18–91; 8:45 am]

BILLING CODE 6450–01–M

Reconfiguration Programmatic Environmental Impact Statement; Amendment to Listing of Public Scoping Meetings

AGENCY: Department of Energy.

ACTION: Programmatic environmental impact statement for reconfiguration of the nuclear weapons complex; amendment to listing of public scoping meetings.

SUMMARY: On March 4, 1991, 56 FR 8988, Department of Energy (DOE) published a listing of public scoping meetings for its Reconfiguration Programmatic Environmental Impact Statement (PEIS). This notice amends the March 4 notice to change the location for the Nevada Test Site meeting in Las Vegas, Nevada, on June 5, 1991. (The March 4 notice was also amended on March 21, 1991, 56 FR 11990.)

DATES: DOE will hold public scoping meetings, on the dates announced in the March 4, 1991, **Federal Register**, near all

sites to be analyzed in detail in the PEIS. Each meeting will be held from 9 a.m. to 9:30 p.m.

ADDRESSES: The revised address for the public meetings in Las Vegas, Nevada, is given below. Locations for the other public meetings were given in the March 4, and March 21, 1991, Federal Register notices.

FOR FURTHER INFORMATION CONTACT: James R. Nicks, Associate Deputy Assistant Secretary for Weapons Complex Reconfiguration (Acting), DP-40, room GA-045, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-1537, Attn: Reconfiguration PEIS.

SUPPLEMENTARY INFORMATION: On February 11, 1991, DOE published its Notice of Intent (NOI) for the Reconfiguration PEIS, and invited comments from all interested parties. On March 4, 1991, DOE published a list of public scoping meetings, including the date, time, and location, and the addresses for its public reading rooms. The notice also gave the rules of conduct for the public scoping meetings. On March 21, 1991, DOE amended the March 4 notice to change the location of some meetings and to add additional public reading rooms. This notice further amends the March 4, 1991, notice as follows.

Location for the Nevada Test Site Meeting. Revised meeting location: Nevada Test Site Meeting Location: University of Nevada-Los Vegas, Thomas and Mack Center, 4505 South Maryland Parkway, Las Vegas, Nevada 89154, (702) 736-3610. (The March 4, 1991, notice gave the meeting location as the Moyer Student Union, University of Nevada-Las Vegas, 4505 Maryland Parkway, Las Vegas, Nevada.)

The date of the Las Vegas meeting remains Wednesday, June 5, 1991.

DOE regrets any inconvenience that this amendment may cause.

Signed in Washington, DC this 15th day of April, 1991, for the United States Department of Energy.

Richard A. Claytor,

Assistant Secretary for Defense Programs.

[FR Doc. 91-9264 Filed 4-18-91; 8:45 am]

BILLING CODE 6450-01-M

Floodplain Wetlands Involvement for the Proposed Remedial Investigation of the 300-FF-5 Operable Unit of the Hanford Site, Richland, WA

AGENCY: Department of Energy (DOE).

ACTION: Notice of Floodplain/Wetlands involvement.

SUMMARY: Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended, DOE proposes to perform the Remedial Investigation/Feasibility Study (RI/FS) of the 300-FF-5 groundwater operable unit on the Hanford Site, Richland, Washington. Pursuant to 10 CFR part 1022 ("Compliance with Floodplain/Wetlands Environmental Review Requirements"), DOE has determined that this action would involve activities within a designated floodplain/wetlands and, therefore, the following notice is submitted for public review and comment.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR part 1022), DOE will prepare a floodplain/wetlands assessment for this proposal. Maps and further information are available from DOE at the address shown below.

DATES: Comments are due on or before May 6, 1991.

ADDRESSES: Address comments to Mr. R. D. Freeberg, U.S. Department of Energy, Richland Operations Office, Richland, Washington 99352.

FOR FURTHER INFORMATION CONTACT: Mr. K. Michael Thompson, 300-FF-5 Operable Unit Manager, DOE-Richland Operations, Richland, Washington 99352, (509) 376-6421.

SUPPLEMENTARY INFORMATION: The proposed RI/FS is necessary to meet the requirements of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended, to determine the nature and extent of the threat posed by a release of hazardous substances to the environment and to evaluate proposed remedies for such a release (40 FR CFR 300.8(d)). The RI/FS activities are preliminary steps in developing plans and alternatives for clean-up of the operable unit. The work is described in detail in DOE/RL 89-14, RI/FS Work Plan for the 300-FF-5 Operable Unit, Hanford Site, Richland, Washington. The work is also necessary to comply with the Hanford Federal Facility Agreement and Consent Order (Ecology et al. 1989), and in particular, supports milestones M-12-00, M-12-04, and M-15-00.

The Hanford Site, owned by the U.S. Government and managed by the DOE-Richland Operations Office (RL), occupies 560 square miles within the semi-arid Pasco Basin of the Columbia Plateau in southeastern Washington. The entire Hanford Site is a controlled access area; 24-hour surveillance is maintained for the protection of Government property.

Located north of the confluence of the Snake and Yakima Rivers and the Columbia River, and north of the City of Richland, the Hanford Site is surrounded primarily by agricultural and range land. The cities of Richland, Kennewick, and Pasco, known as the Tri-Cities, constitute the nearest population center and are southeast of the Hanford Site. The Columbia River flows through the northern part of the Hanford Site, then turns to the south, forming the eastern boundary of the Site. The Yakima River runs along part of the southern boundary of the Site, and joins the Columbia River below the city of Richland, forming the southeast boundary of the Hanford Site.

The Westinghouse Hanford Company (WHC), acting as a co-operator with DOE-RL, has initiated the RI/FS process for this operable unit on the Hanford Site, in concert with the Hanford Federal Facility Agreement and Consent Order. The activities will consider all contaminant sources in the 300 Area of the Hanford Site that contribute to existing groundwater contamination beneath the 300 Area and the surrounding environment. This investigation will include geological, soil, groundwater, surface-water, sediment, and biological studies to determine the nature and extent of the threat to humans and the environment posed by groundwater contamination, and to evaluate proposed remedies.

The 300-FF-5 groundwater operable unit is located on the southeastern section of the Hanford Site, adjacent to the Columbia River, and consists of the aquifer beneath three source operable units (300-FF-1, 300-FF-2, and 300-FF-3). Together, these operable units constitute the 300 Area of the Hanford Site.

The RI/FS will consist of compilation of existing data and on-site studies to characterize the impact of waste disposal activities in the 300-FF-1, 300-FF-2, and 300-FF-3 operable units on the groundwater system. The information will be used to determine appropriate remediation activities for the operable unit. The specific activities, which may occur within the 100-year floodplain, include geophysical surveys, hydrostratigraphy studies, surface-water and sediment investigations, and biota investigations.

The goal of each task is to characterize the extent of known areas of contamination and to identify and characterize unknown areas which may exist. None of the tasks requires major construction activities. The

hydrostratigraphy studies may require the drilling of wells in the floodplain; these activities may or may not be necessary, depending upon the findings of earlier tasks in the RI/FS. Disturbances to the floodplain and wetlands adjacent to the Columbia River will be limited primarily to pedestrain traffic necessary to collect samples, monitor water levels, and carry out surveys with non-intrusive instruments. Following completion of the characterization, remedial action strategies and alternatives will be prepared for the removal and remediation of the contamination from the operable unit.

Issued at Washington, DC, this 12th day of April, 1991.

Leo P. Duffy,

Director, Office of Environmental Restoration and Waste Management.

[FR Doc. 91-9260 Filed 4-18-91; 8:45 am]

BILLING CODE 6450-01-M

R&D Solutions; Intent To Grant Exclusive Patent License

AGENCY: Department of Energy, Office of the General Counsel.

ACTION: Notice of intent to grant exclusive Patent License.

SUMMARY: Notice is hereby given of an intent to grant to R&D Solutions, of Oak Ridge, Tennessee, an exclusive license to practice the invention described in U.S. Patent No. 4,963,341, entitled "Process for Degrading Hypochlorite and Sodium Hypochlorite." The invention is owned by the United States of America, as represented by the Department of Energy (DOE). The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and other terms and conditions to be negotiated. DOE intends to grant the license, upon a final determination in accordance with 35 U.S.C. 209(c), unless within 60 days of this notice the Assistant General Counsel for Intellectual Property, Department of Energy, Washington, DC 20585, receives in writing any of the following, together with supporting documents:

(i) A statement from any person setting forth reasons why it would not be in the best interests of the United States to grant the proposed license; or

(ii) An application for a nonexclusive license to the invention, in which applicant states that he already has brought the invention to practical application or is likely to bring the invention to practical application expeditiously.

DATES: Written comments or nonexclusive license applications are to be received at the address listed below no later than June 18, 1991.

ADDRESSES: Office of Assistant General Counsel for Intellectual Property, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Robert J. Marchick, Office of the Assistant General Counsel for Intellectual Property, U.S. Department of Energy, Forrestal Building, Room 6F-067, 1000 Independence Avenue, 20585; Telephone (202) 586-4792.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 209(c) provides the Department with authority to grant exclusive or partially exclusive licenses in Department-owned inventions, where a determination can be made, among other things, that the desired practical application of the invention has not been achieved, or is not likely expeditiously to be achieved, under a nonexclusive license. The statute and implementing regulations [37 CFR part 404) require that the necessary determinations be made after public notice and opportunity for filing written objections.

R&D Solutions, of Oak Ridge, Tennessee, has applied for an exclusive license to practice the invention embodied in U.S. Patent No. 4,963,341, and has a plan for commercialization of the invention.

The proposed license will be exclusive, subject to a license and other rights retained by the U.S. Government, and subject to a negotiated royalty. The Department will review all timely written responses to this notice, and will grant the license if, after expiration of the 60-day notice period, and after consideration of written responses to this notice, a determination is made, in accordance with 35 U.S.C. 209(c), that the license grant is in the public interest.

Issued in Washington, DC, on April 15, 1991.

Stephen A. Wakefield,

General Counsel.

[FR Doc. 91-9261 Filed 4-18-91; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Petroleum Marketing Publications; Solicitation of Comments

AGENCY: Energy Information Administration, U.S. Department of Energy.

ACTION: Solicitation of comments.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy solicits comments concerning the publication of statistical tables in the Fuel Oil and Kerosene Sales report DOE/EIA-0535.

DATES: Written comments must be received on or before May 20, 1991.

ADDRESSES: Send comments to Alice A. Lippert, Petroleum Marketing Division (EI-431), Energy Information Administration, Department of Energy, Mail Stop 2H-058, 1000 Independence Ave., SW., Washington, DC 20585, 202-586-9600.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Comment Procedure

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93-275) and the Department of Energy Organization Act (Pub. L. No. 95-91), EIA is obliged to publish, and make available to the public, high-quality statistical data that reflect national and regional petroleum marketing sales data as accurately as possible. To meet this responsibility, as well as internal DOE requirements that are dependent on accurate data, the EIA conducts statistical surveys which encompass significant petroleum marketing activities in the United States. As partial fulfillment of these requirements, the EIA publishes the Fuel Oil and Kerosene Sales report on an annual basis. Data published in the Fuel Oil and Kerosene Sales report are obtained from the EIA-821, "Annual Fuel Oil and Kerosene Sales Report," survey. The survey collects annual sales volumes of kerosene, distillate, and residual fuel oil by end-use sector at the State level from a sample of fuel oil distributors.

II. Current Actions

Through disclosure avoidance procedures, EIA seeks to maintain the confidentiality of its respondents and their data when releasing collected survey information.

EIA's disclosure avoidance standard (EIA-88-05-06) addresses statistical confidentiality and describes a method for determining whether individual cell data (published data value(s)) are sensitive or not by application of prescribed rules. Cell data are considered sensitive if one of the following occurs:

1. The non-zero value for a cell is based on the information from one respondent or the non-zero value is the

sum of the reported values from two respondents, or

2. The value for a cell is based on information from three or more respondents but the calculation of a sensitivity measure indicates that the cell should be withheld because one or two large companies dominate the cell.

Data published in the Fuel Oil and Kerosene Sales report do not conform to the EIA–88–05–06 standard. The level of detail provided in these tables has remained basically unchanged from the level of detail provided in publications released under the auspices of the Bureau of Mines since 1932. To date, EIA has not withheld data from this publication. Except for data deemed public information and data required for regulation, EIA never divulges the name of the company associated with a given data element.

Special requests for unpublished data are subject to disclosure avoidance procedures. Individual company data are considered to be proprietary and are not available to the public. Provisions for confidentiality of information when collecting the data on Form EIA–821, "Annual Fuel Oil and Kerosene Sales," are discussed in the instructions of the form and state that information contained in the form will be kept confidential and not disclosed to the public to the extent that it satisfies the criteria for exemption under the Freedom of Information Act (FOIA), 5 U.S.C. 552, the DOE regulations, 10 CFR 1004.11, implementing the FOIA and the Trade Secrets Act, 18 U.S.C. 1905.

III. Comment Procedures

Written Comments

Conformance with EIA Standard 88–05–06 could require (1) the discontinuation of some State and regional petroleum marketing sales distribution information in the publication, (2) withholding publication of other sensitive cells, and (3) a sufficient number of additional cells to protect the sensitive cells. This would significantly reduce the level of information which has been available for more than 20 years, and which EIA believes is useful.

Therefore, EIA plans to continue publishing the data as in the past. This could continue some statistical disclosure of cells in the tables of the Fuel Oil and Kerosene Sales report. EIA will continue to consider company-level data proprietary in all other ways. Objections to this course of action should be provided in writing.

Statutory Authority

Sections 5(a), 5(b), 13(b) and 52 of Pub. L. No. 93–275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, April 15, 1991.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 91–9250 Filed 4–18–91; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF91–57–000]

Potlatch Corp.; Correction Notice

April 15, 1991.

This notice corrects the date for filing comments in this proceeding as published in the **Federal Register** on March 29, 1991 (56 FR 13135). The comment date for Item No. 1 (Potlatch Corporation) should be corrected to read "April 22, 1991".

Lois D. Cashell,

Secretary.

[FR Doc. 91–9182 Filed 4–18–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP91–1722–000, et al.]

Kentucky West Virginia Gas Co., et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Kentucky West Virginia Gas Co.

[Docket No. CP91–1722–000]

April 9, 1991.

Take notice that on April 5, 1991, Kentucky West Virginia Gas Company (Kentucky West), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP91–1722–000 a prior notice request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of ten shippers under its blanket certificate issued in Docket No. CP86–527–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Kentucky West and is summarized in the attached appendix. Kentucky West states that all the receipt points are located in Kentucky and all the gas is delivered at the interconnections of Kentucky West with Columbia Gas Transmission Corporation in eastern Kentucky. Kentucky West further states that, in each instance, the 120-day service commenced on February 1, 1991.

Comment date: May 24, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Shipper name	Peak day, average day, annual MMBtu	Contract date, rate schedule, service type	Related docket
East Kentucky Gas Company	50 15 18,250	1–1–91, IGTS, Interruptible.	ST91–6805–000.
Maximum Oil and Gas, Inc.	300 150 109,500	1–1–91, IGTS, Interruptible.	ST91–6806–000.
JML Oil and Gas	100 37 36,500	1–1–91, IGTS, Interruptible.	ST91–6807–000.
Angela Oil and Gas Company	500 217 182,500	1–1–91, IGTS, Interruptible.	ST91–6808–000.

Shipper name	Peak day, average day, annual MMBtu	Contract date, rate schedule, service type	Related docket
Monerco Investments	200 159 73,000	1-1-91, IGTS, Interruptible.	ST91-6809-000.
Basin Energy Company	1,500 1,354 547,500	1-1-91, IGTS, Interruptible.	ST91-6810-000.
Interstate Natural Gas Company	1,000 556 365,000	1-1-91, IGTS, Interruptible.	ST91-6811-000.
National Energy Resources Corporation	100 28 36,500	1-1-91, IGTS, Interruptible.	ST91-6812-000.
C.D. and G. Development Company	4,500 3,175 1,642,500	1-1-91, IGTS, Interruptible.	ST91-6813-000.
Newport Oil Corporation	100 21 36,500	1-1-91, IGTS, Interruptible.	ST91-6814-000.

2. Williston Basin Interstate Pipeline Company

[Docket No. CP91-1729-000]

April 9, 1991

Take notice that on April 5, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP91-1729-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157,211) for authorization to add metering and appurtenant facilities under the blanket certificate issued in Docket No. CP82-487-000, *et al.*, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williston Basin proposes to construct and operate a metering station and appurtenant facilities for use in providing transportation service deliveries to Montana-Dakota Utilities Co. (Montana-Dakota), a local distribution company, for ultimate end use by Midland O'Leary, Inc. It is stated that Williston Basin is currently providing wholesale natural gas sales service to Montana-Dakota utilizing an existing tap and meter located on pipeline right-of-way. Williston Basin states that it proposes to install an additional meter at its existing meter station in order to effectuate the proposed natural gas deliveries to Montana-Dakota for use use by its end-use customer. It is stated that the additional tap and meter is less costly than increasing the capacity of the existing meter.

Williston Basin states that the facilities to be constructed at the existing meter station would consist of a positive meter and miscellaneous regulators, gauges and valves. The proposed meter station would be located on existing pipeline right-of-way in Yellowstone County, Montana. Williston Basin states that the cost of the proposed facilities, estimated to be $9,315, would be reimbursed by Montana-Dakota. Williston Basin further states that the installation of the proposed facilities would have no significant effect on its peak day or annual requirements.

Comment date: May 24, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. Unigas Energy, Inc. (Successor-in-interest to Unicorp Energy, Inc.)

[Docket No. CI90-36-001]

April 9, 1991.

Take notice that on November 7, 1990, Unigas Energy, Inc. (Unigas) of 250 East Front Street, Traverse City, Michigan 49684, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder requesting that the Commission amend the blanket sales certificate with pregranted abandonment issued to its predecessor Unicorp Energy, Inc. (Unicorp) in Docket No. CI90-36-000 to reflect Unigas as the certificate holder, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

By Certificate of Amendment of Certificate of Incorporation dated and effective November 6, 1990, Unicorp Energy, Inc. changed its name to Unigas Energy, Inc.

Comment date: April 29, 1991, in accordance with Standard Paragraph J at the end of this notice.

4. LaSER Marketing Company, (Successor-in-interest to LaSER Marketing Company, a division of LaSalle Energy Corp.)

[Docket No. CI85-002, et al.]

April 9, 1991.

Take notice that July 25, 1990, LaSER Marketing Company (Applicant) of P.O. Box 1478, Houston, Texas 77251-1478, filed an application pursuant to Section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (commission) regulations thereunder requesting that the Commission redesignate all certificates previously issued to LaSER Marketing Company, a Division of LaSalle Energy Corp. in the name of LaSER Marketing Company, all as more fully set forth in the application which is on file with the Commission and open for public inspection. Applicant also requests that LaSER Marketing Company be substituted for LaSER Marketing Company, a division of LaSalle Energy Corp. in any other proceedings before the Commission.

Applicant states that LaSER Marketing Company, a division of LaSalle Energy Corp. changed its name to LaSER Marketing Company on June 12, 1990 upon becoming a subsidiary of LaSalle Energy Corp.

Comment date: April 29, 1991, in accordance with Standard Paragraph J at the end of this notice.

5. Columbia Gulf Transmission Company

[Docket Nos. CP91-1723-000, CP91-1724-000, CP91-1725-000, CP91-1726-000, CP91-1727-000, CP91-1728-000]

April 9, 1991

Take notice that on April 5, 1991, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 683, Houston, Texas 77001, filed in the above-

referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP86–239–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transaction under § 284.223 of the Commission's Regulations, has been provided by Columbia Gulf and is summarized in the attached appendix.

Comment date: May 24, 1991, in accordance with Standard Paragraph G at this end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91–1723–000 (4–5–91)	Catamount Natural Gas, Inc. (Marketer).	100,000 40,000 14,600,000	OLA, LA	LA, AL, TN	12–1–88, ITS–1&2, Interruptible.	ST91–7124–000, 2–22–91
CP91–1724–000 (4–5–91)	Meth Corporation (Marketer).	25,000 10,000 3,650,000	OLA, LA	LA, TX	10–20–90, ITS–2, Interruptible.	ST91–7608–000, 2–22–91
CP91–1725–000 (4–5–91)	Ledco, Inc. (Marketer)	80,000 25,000 9,125,000	OLA, LA	LA, AL, TN, OLA	6–1–89, ITS–1&2, Interruptible.	ST91–7125–000, 2–22–91
CP91–1726–000 (4–5–91)	Sonat Marketing Company (Marketer).	10,000 2,000 730,000	OLA, LA	LA, AL	8–29–88, ITS–1&2, Interruptible.	ST91–7172–000, 2–21–91
CP91–1727–000 (4–5–91)	Shell Offshore, Inc. (Producer).	50,000 15,000 5,475,000	OLA, LA	OLA, LA	4–1–87, ITS–2, Interruptible.	ST91–7123–000, 2–21–91
CP91–1728–000 (4–5–91)	Energy Development Corporation (Producer).	80,000 30,000 10,950,000	LA	LA	4–1–89, ITS–2, Interruptible.	ST91–7069–000, 2–20–91

[1] Offshore Louisiana is shown as OLA.

6. Wes Cana Energy Marketing (U.S.) Inc., (Successor-in-interest to Canadian Natural Gas Clearing House (U.S.) Inc.

[Docket No. CI90–99–001]

April 9, 1991.

Take notice that on November 7, 1990, Wes Cana Energy Marketing (U.S.) Inc. (Wes Cana) of 2400, 300–5th Avenue SW., Calgary, Alberta, T2P 3C4, Canada, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder requesting that the Commission amend the blanket sales certificate with pregranted abandonment issued to its predecessor Canadian Natural Gas Clearing House (U.S.) Inc. (CNGCH) in Docket No. CI90–99–000 to reflect Wes Cana as the certificate holder effective October 11, 1990, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

By Certificate of Amendment of Certificate of Incorporation dated and effective October 11, 1990, Canadian Natural Gas Clearing House (U.S.) Inc. changed its name to Wes Cana Energy Marketing (U.S.) Inc.

Comment date: April 29, 1991, in accordance with Standard Paragraph J at the end of this notice.

7. Natural Gas Pipeline Co. of America

[Docket Nos. CP91–1717–000; CP91–1718–000; CP91–1719–000; CP91–1720–000; CP91–1721–000]

April 9, 1991.

Take notice that on April 5, 1991, Natural Gas Pipeline Company of America (Applicant), 701 East 22nd Street, Lombard, Illinios 60148, filed in the above referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86–582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: May 24, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day,[1] average day, annual	Receipt [2] points	Delivery points	Start up date, rate schedule, service type	Related [3] docket, contract date
CP91-1717-000 (4-05-91)	NGC Transportation, Inc..	250,000 100,000 36,500,000	AR, CO, IA, IL, KS, LA, OLA, MO, NE, NM, OK, TX, OTX.	LA, OLA, OK, TX, IA, OTX, IL, NM, CO.	2-01-91, ITS Interruptible.	ST91-7115-000, 9-28-89.
CP91-1718-000 (4-05-91)	Centran Corporation.....	30,000 10,000 3,650,000	AR, CO, IA, IL, KS, LA, OLA, MO, NE, NM, OK, TX, OTX.	LA, OLA, OK, TX, IA, OTX, IL, NM, CO.	2-01-91, ITS Interruptible.	ST91-7118-000, 9-04-90.
CP91-1719-000 (4-05-91)	Tejas Hydrocarbons Company.	100,000 40,000 14,600,000	AR, CO, IA, IL, KS, LA, OLA, MO, NE, NM, OK, TX, OTX.	LA, OLA, OK, KS, TX, OTX, MO, NM, IA, NE, AR, IL.	2-01-91, ITS Interruptible.	ST91-7140-000, 1-25-91.
CP91-1720-000 (4-05-91)	MidCon Marketing Corp...	150,000 75,000 27,375,000	AR, CO, IA, IL, KS, LA, OLA, MO, NE, NM, OK, TX, OTX.	LA, OLA, TX, OTX, AR, IA, OK, CO, NM, IL.	2-01-91, ITS Interruptible.	ST91-7138-000, 1-23-91.
CP91-1721-000 (4-05-91)	Midcon Marketing Corp....	75,000 50,000 18,250,000	AR, CO, IA, IL, KS, LA, OLA, MO, NE, NM, OK, TX, OTX.	LA, OLA, TX, OTX, IA, OK, CO, NM, IL.	2-01-91, ITS Interruptible.	ST91-7133-000, 1-28-91.

[1] Quantities are shown in MMBtu and additional volumes may be accepted pursuant to the overrun provisions of Applicant's Rate Schedule ITS.
[2] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[3] If an ST docket is shown, 120-day transportation service was reported in it.

8. Columbia Gulf Transmission Company

[Docket Nos. CP91-1709-000; CP91-1710-000]

April 9, 1991.

Take notice that Columbia Gulf Transmission Company, 3805 West Alabama, Houston, Texas 77027, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-239-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[4]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: May 24, 1991, in accordance with Standard Paragraph G at the end of this notice.

[4] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name type	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-1709-000 (April 3, 1991)	Equitable Resources Marketing Company (Marketer).	100,000 40,000 36,500,000	OLA, LA.....	LA, MS, TN.....	ITS-1 and ITS-2 Interruptible.	ST91-7171, 2-18-91.
CP91-1710-000 (April 3, 1991)	Hadson Gas Systems, Inc. (Marketer).	121,500 50,000 44,347,500	OLA, LA.....	LA, OLA.....	ITS-2 Interruptible....	ST91-7066, 2-20-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

9. Trunkline Gas Company

[Docket No. CP91-1730-000]

April 9, 1991.

Take notice that on April 5, 1991, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP91-1730-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Phillips Petroleum Company (Phillips), a producer, and to construct and operate under § 157.211(a)(2) a related delivery meter facility, under the blanket certificates issued in Docket Nos. CP86-586-000 and CP83-84-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Trunkline states that, pursuant to an agreement dated February 19, 1991, under its Rate Schedule PT, it proposes to transport up to 10,000 Mcf per day of natural gas. Trunkline states that it would transport 10,000 Mcf on an average day and 36,500,000 Mcf annually. Trunkline further states that the gas would be transported from Illinois, Louisiana, Tennessee, Texas, Offshore Louisiana, and Offshore Texas, and would be redelivered in Galveston County, Texas.

It is stated that the delivery point would be known as the Phillips-Huff A1 in SF A A-2, Galveston County, Texas. Trunkline advises that Phillips would own the meter, and Trunkline would operate and maintain the facilities. Trunkline estimates that the facilities would cost $8,300 which would be reimbursed by Phillips.

Comment date: May 24, 1991, in accordance with Standard Paragraph G at the end of this notice.

10. Northern Natural Gas Company

[Docket No. CP91-1677-000]

April 9, 1991.

Take notice that on March 29, 1991, Northern Natural Gas Company (Northern), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP91-1677-000, an application pursuant to section 7(c) of the Natural Gas Act

and § 157.7 and 157.14 of the Commission's Regulations for authorization to (1) construct and operate approximately ten miles of eight-inch pipeline extending from Northern's mainline in Pine County, Minnesota to new town border station (TBS) located across the St. Croix River in Burnett County, Wisconsin and (2) provide a certain sales service to Wisconsin Gas Company (Wisconsin Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern states that the proposed pipeline is needed to facilitate a sales service to Wisconsin Gas. It is explained that, as a result of increased demand in various communities throughout its market area, Wisconsin Gas has requested sales service of up to 7,600 Mcf of natural gas per day under Northern's existing Rate Schedules CD–1, SS–1, and WPS–1 for delivery at the abovementioned TBS. In the event Northern's unbundled services pending in Docket No. CP89–1227 are approved and effective at the time the facilities proposed herein are placed in service, Northern asserts that the underlying sales/purchase agreement provides for comparable "unbundled" services under its proposed Rate Schedules TF and SF.

Northern states that it has sufficient mainline capacity to deliver the proposed volumes through the new lateral pipeline and that no unsatisfied request for firm mainline capacity would be used to deliver the incremental volumes. It is further stated that the capacity of the proposed lateral is sufficient to deliver the 7,600 Mcf per day of contract demand under peak day design conditions. The cost of the proposed lateral pipeline is estimated to be $2,726,260 and Northern plans to finance this cost with internally generated funds.

Comment date: April 30, 1991, in accordance with Standard Paragraph F at the end of this notice.

11. East Tennessee Natural Gas Company

[Docket No. CP91–1716–000]

April 10, 1991.

Take notice that on April 4, 1991, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 10245, Knoxville, Tennessee, filed in Docket No. CP91–1716–000 a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to establish, construct and operate two new delivery points for its existing customers, Knoxville Utilities Board (KUB) and the Roanoke Gas Company (Roanoke), under East Tennessee's blanket certificate issued in Docket No. CP82–412–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

East Tennessee proposes to establish a new delivery point for its existing customer, KUB, in Knox County, Tennessee. It is stated that the new delivery point for KUB would allow KUB to reinforce its system and add system reliability as it continues to grow. It is further stated that only the tap of East Tennessee's pipeline is required to effect the new delivery point with no metering or other facilities required. East Tennessee further states that the new delivery point for Roanoke would allow East Tennessee to redeliver storage gas to its system via Roanoke by utilizing transportation on Columbia Gas Transmission from storage to Roanoke.

The quantities of natural gas proposed to be delivered to the customers at the new delivery points are as follows:

Knoxville Utilities Board
Maximum Hour: 1,500 Mcf
Peak Day: 15,000 Mcf

Roanoke Gas Company
Maximum Hour: 600 Mcf
Peak Day: 9,789 Mcf

It is stated that the total volumes to be delivered to KUB and Roanoke, after the new delivery points are established, would not exceed the total volumes currently authorized for delivery by East Tennessee.

Comment date: May 28, 1991, in accordance with Standard Paragraph G at the end of this notice.

12. National Fuel Gas Supply Corporation

[Docket Nos. CP91–1758–000; CP91–1759–000; CP91–1760–000; CP91–1761–000; CP91–1762–000; CP91–1773–000; CP91–1774–000; CP91–1775–000; CP91–1776–000; CP91–1777–000; CP91–1778–000; CP91–1779–000; CP91–1780–000; CP91–1781–000; CP91–1782–000; and CP91–1783–000]

April 11, 1991.

Take notice that on April 9, 1991, National Fuel Gas Supply Corporation, 10 Lafayette Square, Buffalo, New York 14203, (National) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP89–1582–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[5]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by National and is summarized in the attached appendix.

Comment date: May 28, 1991, in accordance with Standard Paragraph G at the end of this notice.

[5] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name	Peak day, average day, annual MMBtu	Contract date, rate schedule, service type	Related docket, start up date
CP91–1758–000 (4–9–91)	Connecticut Natural Gas Corporation	51,300 51,300 18,724,500	12–28–90, IT, Interruptible	ST91–7177–000, 2–1–91.
CP91–1759–000 (4–9–91)	Entrade Corporation	25,000 25,000 9,125,000	12–31–90, IT–1, Interruptible	ST91–7329–000, 2–1–91.
CP91–1760–000 (4–9–91)	Kidder Exploration Inc	1,000 1,000 365,000	1–2–91, IT–1, Interruptible	ST91–7397–000, 2–1–91.

Docket No. (date filed)	Shipper name	Peak day, average day, annual MMBtu	Contract date, rate schedule, service type	Related docket, start up date
CP91-1761-000 (4-9-91)	Mid American Natural Resources, Inc	1,333 1,333 486,545	1-3-91, IT-1, Interruptible	ST91-7338-000, 2-1-91.
CP91-1762-000 (4-9-91)	Citizens Gas Supply Corporation	38,500 38,500 14,052,500	12-28-90, IT, Interruptible	ST91-7415-000, 2-1-91.
CP91-1773-000 (4-9-91)	Texas-Ohio Gas, Inc	12,458 12,458 4,547,170	1-2-91, IT-1, Interruptible	ST91-7345-000, 2-1-91.
CP91-1774-000 (4-9-91)	Empire Exploration, Inc	100,000 100,000 36,500,000	1-2-91, IT-1, Interruptible	ST91-7463-000, 2-2-91.
CP91-1775-000 (4-9-91)	Empire Exploration, Inc	9,643 9,643 3,519,695	1-2-91, IT-1, Interruptible	ST91-7353-000, 2-2-91.
CP91-1776-000 (4-9-91)	NGC Transportation, Inc	500,000 500,000 182,500,000	12-28-90, IT-1, Interruptible	ST91-7267-000, 2-1-91.
CP91-1777-000 (4-9-91)	National Fuel Resources	200,000 200,000 73,000,000	1-2-91, IT-1, Interruptible	ST91-7236-000, 2-1-91.
CP91-1778-000 (4-9-91)	Equitable Resources Marketing Company.	50,000 50,000 18,250,000	12-28-90, IT-1, Interruptible	ST91-7269-000, 2-15-91.
CP91-1779-000 (4-9-91)	Centran Corporation	15,136 15,136 5,520,990	12-31-90, IT, Interruptible	ST91-7249-000, 2-2-91.
CP91-1780-000 (4-9-91)	KN Gas Marketing, Inc	150,000 150,000 54,750,000	1-2-91, IT-1, Interruptible	ST91-7498-000, 2-15-91.
CP91-1781-000 (4-9-91)	Chautauqua Energy Marketing, Inc	7,000 7,000 2,555,000	12-28-90, IT, Interruptible	ST91-7195-000, 2-1-91.
CP91-1782-000 (4-9-91)	Union Texas Petroleum Corporation	25,000 25,000 9,125,000	1-3-91, IT-1, Interruptible	ST91-7506-000, 2-21-91.
CP91-1783-000 (4-9-91)	Diamond Energy Inc	8,000 8,000 2,920,000	12-31-90, IT-1, Interruptible	ST91-7257-000, 2-1-91.

13. Meridian Oil Inc., Meridian Oil Production Inc., and Southland Royalty Company

[Docket No. CI91-8-000]

April 11, 1991.

Take notice that on January 22, 1991, Meridian Oil Inc., Meridian Oil Production Inc., and Southland Royalty Company (Meridian) of 2919 Allen Parkway, suite 900, Houston, Texas 77019, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for a blanket certificate to continue sales previously made under certificates issued to various producers, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Meridian acquired numerous properties by various assignments from the predecessors-in-interest listed in the application, and is now seeking authorization to continue sales from the acquired interests. Meridian requests that jurisdictional sales which were and are being made by Meridian since the effective date of assignment of the various properties involved, or future jurisdictional sales from properties which Meridian may acquire in the time period prior to January 1, 1993, the effective date of decontrol under the Natural Gas Wellhead Decontrol Act of 1989, be covered by the proposed blanket certificate. Meridian also requests that the Commission waive its regulations under section 154 and part 271 pertaining to the establishment and maintenance of rate schedules.

Comment date: May 1, 1991, in accordance with Standard Paragraph J at the end of this notice.

14. ANR Pipeline Company, Southern Natural Gas Company

[Docket No. CP91-1733-000]

[Docket No. CP91-1740-000]

April 11, 1991.

Take notice that ANR Pipeline Company, 500 Renaissance Center, Detroit, Michigan 48243, and Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563, (Applicants) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under the blanket certificates issued in Docket No. CP88-532-000 and Docket No. CP88-316-000, respectively, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[6]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached appendix.

Comment date: May 28, 1991, in accordance with Standard Paragraph G at the end of this notice.

[6] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual dt	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start-up date
CP91-1733-000 (4-8-91)	Polo Energy Corp. (Marketer).	1,000 1,000 365,000	LA	LA	12-1-90, ITS, Interruptible.	ST91-7055, 2-9-91.
CP91-1740-000 (4-8-91)	Riverside Energy Resources, Inc. (Marketer).	[2] 80,000 9,863 3,600,000	LA, TX, OTX, OLA, MS, AL.	LA, MS	1-8-91, IT, Interruptible.	ST91-7521, 2-7-91.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] Measured in MMBtu.

15. United Gas Pipe Line Company

[Docket No. CP91-1708-000]

15. United Gas Pipe Line Company

[Docket No. CP91-1704-000]

15. Algonquin Gas Tansmission Company

[Docket No. CP91-1703-000]

April 11, 1991.

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[7]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: May 28, 1991, in accordance with Standard Paragraph G at the end of this notice.

[7] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day, [1] average annual	Points of		Start up date, rate schedule	Related [2] dockets
				Receipt	Delivery		
CP91-1703-000 4-3-91	United Gas Pipe Line Company	FRM, Inc.	15,450 15,450 5,639,250	On LA, Off LA, TX, MS.	MS, On LA	2-7-91, ITS	ST91-7794-000.
CP91-1704-000 4-3-91	United Gas Pipe Line Company	Independent Energy Marketing, Ltd	515 515 187,975	TX	On LA	3-1-91, ITS	ST91-7691-000.
CP91-1708-000 4-3-91	Algonquin Gas Transmission Company.	Coastal Gas Marketing Company	500,000 500,000 182,500,000	CT, NJ, NY, MA	MA, RI, NY, CT, NJ	2-1-91, AIT-1	ST91-7646-000.

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

16. United Gas Pipe Line Company

[Docket Nos. CP91-1735-000; CP91-1736-000; CP91-1737-000; CP91-1738-000; CP91-1739-000]

April 11, 1991.

Take notice that Applicant filed in the respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[8]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Applicant states that each of the proposed services would be provided under an executed transportation agreement, and that Applicant would charge the rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: May 28, 1991, in accordance with Standard Paragraph G at the end of this notice.

Applicant: United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478

Blanket Certificate Issued in Docket No.: CP88-6-000

[8] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type shipper)	Peak day, average annual	Points of		Start up date, rate schedule	Related dockets [2]
			Receipt	Delivery		
CP91-1735-000 (04-08-91)	Tejas Hydrocarbons Company (marketer).	154,500 154,500 56,392,000	LA, TX, Offshore LA	TX, MS, LA	02-06-91, ITS	ST91-6981-000
CP91-1736-000 (04-08-91)	NGC Transportation, Inc. (marketer).	154,500 154,500 56,392,000	LA, TX, AL, MS, Offshore TX, Offshore LA.	LA, TS, MS, FL, Offshore TX, Offshore LA.	03-01-91, ITS	ST91-7845-000
CP91-1737-000 (04-08-91)	Williams Gas Marketing, Inc. (marketer).	51,500 51,500 18,797,500	Offshore LA, LA	LA, TX, MS	02-21-91, ITS	ST91-7846-000
CP91-1738-000 (04-08-91)	V.H.C. Gas Systems, L.P. (marketer).	206,000 206,000 75,190,000	LA, TX, AL	TX, LA, MS, AL, FL	03-25-91, ITS	ST91-7926-000
CP91-1739-000 (04-08-91)	MidCon Marketing Inc. (marketer).	721,500 721,500 263,165,000			03-21-91, ITS	ST91-7925-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] If an ST docket is shown, 120-day transportation service was reported in it.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-9184 Filed 4-18-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-1732-000, et al.]

K N Energy, Inc., et al.; Natural gas certificate filings

April 12, 1991.

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP91-1732-000]

Take notice that on April 8, 1991, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado 80228, filed a request with the Commission in Docket No. CP91-1732-000 pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, and part 157 of the Commission's Regulations thereunder for permission and approval to abandon an exchange service with Panhandle Eastern Pipe Line Company (Panhandle) and El Paso Natural Gas Company (El Paso), pursuant to a September 26, 1975, order in Docket No. CP75-1, *et al.*, and an agreement entered into between the parties which is on file with the Commission as Rate Schedule X-3 of K N's FERC Gas Tariff, all as more fully set forth in the request which is open to public inspection.

K N states that it receives gas into its existing gathering facilities, gas which is produced from certain wells in which El Paso has an interest, and El Paso receives gas into its existing gathering facilities gas produced from certain wells in which K N has an interest, all in Roger Mills County, Oklahoma and Hemphill County, Texas. It is also stated

that balancing is performed between the facilities of K N and El Paso in Roger Mills County, Oklahoma and Hemphill County, Texas. On December 7, 1990, El Paso advised K N of its election to terminate the above mentioned agreement, effective July 1, 1991. K N further states that it understands Panhandle and El Paso have or will soon file to abandon their portion of the exchange service.

Comment date: May 3, 1991, in accordance with Standard Paragraph F at the end of this notice.

2. Southern Natural Gas Company

[Docket No. CP91-1784-000]

Take notice that on April 9, 1991, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202-2563, filed in Docket No. CP91-1784-000 a request pursuant to §§ 157.205 and 284.223(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide a transportation service for Shell Gas Trading Company (Shell), a marketer, on an interruptible basis under its blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Southern states that the maximum daily, average daily and annual quantities that it would transport on behalf of Shell would be 40,000 MMBtu equivalent of natural gas, 40,000 MMBtu equivalent of natural gas and 14,600,000 MMBtu equivalent of natural gas, respectively.

Southern indicates that in Docket No. ST91-6951-000 it reported that transportation service on behalf of Shell commenced on February 1, 1991 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: May 28, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Gas Transmission Corporation

[Docket No. CP91-1731-000]

Take notice that on April 8, 1991, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP91-1731-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to add a new delivery point for Nitrogen Products, Inc. (Nitrogen Products) at the site of Texas Gas' existing Helena No. 1 Sales Meter Station located near Helena in Phillips County, Arkansas under its blanket certificate issued in Docket No. CP82-407-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas states that the Helena No. 1 Sales Meter Station consists of two 8-inch diameter meter runs and is one of the points of delivery where Texas Gas is authorized to make sales to Arkansas Louisiana Gas Company. Texas Gas proposes to establish a new delivery point to Nitrogen Products by separating the two 8-inch diameter meter runs by approximately 20 feet and enclosing the second meter in a new meter building. Texas Gas indicates that the separated meter will then be utilized to deliver up to 28,000 MMBtu per day of gas transported by Texas Gas on a interruptible basis for Nitrogen Products. Texas Gas states that Nitrogen Products will construct a connecting pipeline from their plant to the separated meter station. Texas Gas further indicates that the referenced transportation for Nitrogen Products will be rendered under Texas Gas' IT Rate Schedule under authority of Texas Gas' Blanket Certificate issued in Docket No. CP88-686-000.

Texas Gas states that the establishment of the new delivery point to the Nitrogen Products plant at Helena will not affect Texas Gas' ability to serve Arkansas Louisiana Gas Company at that location.

Comment date: May 28, 1991, in accordance with Standard Paragraph G at the end of this notice.

Trunkline Gas Co.

[Docket Nos. CP91-1747-000; CP91-1748-000; CP91-1749-000; CP91-1750-000; CP91-1751-000]

Take notice that the above referenced companies (Applicants) filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: May 28, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] avg. annual	Points of		Start up date, rate schedule	dockets Related [2]
				Receipt	Delivery		
CP91-1747-000 4/09/91	Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251	Shell Gas Trading Company	100,000 100,000 36,500,000	IN, IL, LA, TN, TX, Offshore	LA	PT, Interruptible, 3/01/91	CP86-586-000, ST91-7731-000.
CP91-1748-000 4/09/91	Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251	Coast Energy Group, Inc.	35,000 35,000 12,775,000	Offshore TX, LA, TN, IL	LA	PT, Interruptible, 3/02/91	CP86-586-000, ST91-7799-000.

Docket No. (date filed)	Applicant	Shipper name	Peak day,[1] avg. annual	Points of		Start up date, rate schedule	dockets Related [2]
				Receipt	Delivery		
CP91-1749-000 4/09/91	Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251	Enron Gas Marketing, Inc.	50,000 50,000 18,250,000	Offshore LA, TX, IL, TN, Offshore	IL	PT, Interruptible, 2/28/91	CP86-586-000, ST91-7733-000
CP91-1750-000 4/09/91	Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251	GasTrak Corporation.	100,000 100,000 36,500,000	Offshore LA, TX, IN, TN	OH	PT, Interruptible, 3/01/91	CP86-586-000, ST91-7734-000
CP91-1751-000 4/09/91	Trunkline Gas Company, P.O. Box 1642, Houston, TX 77251	Access Energy Corporation.	100,000 100,000 36,500,000	Offshore LA, TX, IL, TN, Offshore	IN	PT, Interruptible, 3/01/91	CP86-586-000, ST91-7731-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

5. Sea Robin Pipeline Co.

[Docket No. CP91-1715-000]

Take notice that on April 4, 1991, Sea Robin Pipeline Company (Sea Robin), Post Office Box 2563, Birmingham, Alabama 35202 filed in Docket No. CP91-1715-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service for Chevron, U.S.A. Inc., all as more fully set forth in the application on file with the Commission and open to public inspection.

Sea Robin states that it proposes to abandon the transportation service performed for Chevron, U.S.A. Inc. formerly known as Gulf Oil Corporation (Gulf). Sea Robin states said services is rendered pursuant to an agreement dated August 19, 1971 between Sea Robin and Gulf which is designated as Sea Robin's Rate Schedule X-5. The agreement under which this transportation service is performed will expire September 1, 1991. Sea Robin further states that because it is an open-access transporter, any gas currently transported under Rate Schedule X-5 can instead be transported under its open-access blanket certificate or pursuant to Section 311 of the Natural Gas Policy Act of 1968. No facilities will be abandoned in connection with the abandonment of the transportation service.

Comment date: May 3, 1991, in accordance with Standard Paragraph F at the end of this notice.

6. Natural Gas Pipeline Co. of America

Docket Nos. CP91-1752-000; CP91-1753-000; CP91-1754-000; CP91-1755-000; CP91-1756-000; CP91-1757-000

Take notice that Natural Gas Pipeline Company of America, 701 East 22nd Street, Lombard, Illinois 60148, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: May 28, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule service type	Related docket, start up date
CP91-1752-000 (4-9-91)	Enron Gas Marketing, Inc. (Marketer).	200,000 100,000 36,500,000	Various	Various	12-21-90, ITS, Interruptible.	ST91-7116 2-1-91.
CP91-1753-000 (4-9-91)	North American Resources Co. (Producer).	30,000 30,000 10,950,000	OK	TX	11-9-89, FTS, Firm.	ST91-7136, 2-1-91.
CP91-1754-000 (4-9-91)	PSI Gas Marketing, Inc. (Marketer).	100,000 40,000 14,600,000	Various	Various	1-23-91, ITS, Interruptible.	ST91-7135, 2-1-91.
CP91-1755-000 (4-9-91)	The Peoples Gas Light & Coke Co. (LDC).	20,000 20,000 7,300,000	LA, TX	LA, TX	8-13-90, FTS, Firm.	ST91-7152, 2-1-91.
CP91-1756-000 (4-9-91)	Arco Oil & Gas Co. (Producer).	100,000 60,000 21,900,000	Various	Various	8-9-88, ITS, Interruptible.	ST91-7151, 2-1-91.
CP91-1757-000 (4-9-91)	Entrade Corp. (Marketer).	200,000 75,000 27,375,000	Various	Various	1-11-91, ITS, Interruptible.	ST91-7615, 2-5-91.

7. Texas Gas Transmission Corporation

[Docket No. CP91-1731-000]

Take notice that on April 8, 1991, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP91-1731-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act for authorization to add a new delivery point for Nitrogen Products, Inc. (Nitrogen Products) at the site of Texas Gas' existing Helena No. 1 Sales Meter Station located near Helena in Phillips County, Arkansas under its blanket certificate issued in Docket No. CP82-407-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Gas states that the Helena No. 1 Sales Meter Station consists of two 8-inch diameter meter runs and is one of the points of delivery where Texas Gas is authorized to make sales to Arkansas Louisiana Gas Company. Texas Gas proposes to establish a new delivery point to Nitrogen Products by separating the two 8-inch diameter meter runs by approximately 20 feet and enclosing the second meter in a new meter building. Texas Gas indicates that the separated meter will then be utilized to deliver up to 28,000 MMBtu per day of gas transported by Texas Gas on a interruptible basis for Nitrogen Products. Texas Gas states that Nitrogen Products will construct a connecting pipeline from their plant to the separated meter station. Texas Gas further indicates that the referenced transportation for Nitrogen Products will be rendered under Texas Gas' IT Rate Schedule under authority of Texas Gas' Blanket Certificate issued in Docket No. CP88-686-000.

Texas Gas states that the establishment of the new delivery point to the Nitrogen Products plant at Helena will not affect Texas Gas' ability to serve Arkansas Louisiana Gas Company at that location.

Comment date: May 28, 1991, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-9183 Filed 4-18-91; 8:45 am]

BILLING CODE 6717-01-M

Western Area Power Administration

Proposal to Establish an Energy Planning and Management Program

AGENCY: Western Area Power Administration, DOE.

ACTION: Request for public comments on Western Area Power Administration's (Western) proposed Energy Planning and Management Program.

SUMMARY: Western proposes to establish an Energy Planning and Management Program (Program) to replace its Guidelines and Acceptance Criteria (G&AC) for the Conservation and Renewable Energy (C&RE) Program. Western's C&RE Program was reviewed during the past year. This review showed Western should adopt a more comprehensive approach than the existing C&RE Program G&AC. The goal of the Energy Planning and Management Program is to link Western's power resource allocations with long-term energy planning and efficient electric energy use by Western's customers.

BACKGROUND: On November 13, 1981 (46 FR 56140), Western published its initial G&AC. These provide for the development and implementation of customer C&RE programs.

C&RE programs are contractually required for all power customers who purchase long-term firm Federal power for longer than 1 year. The term "purchaser" includes member-based associations and their distribution or user members. Congressional legislation reinforcing Western's program was included in title II of the Hoover Power Plant Act of 1984 (42 U.S.C. 7275-76). An amendment to the G&AC was issued on August 21, 1985 (50 FR 33892).

The proposed actions are based on the G&AC requirement of a C&RE program review every 5 years. As a part of this review, Western conducted 17 public workshops in 1990 and analyzed 84 comments. Western continues to receive numerous comments from customers, environmental organizations, and the public about its C&RE program requirements. All comments will become a part of the record of Program development.

Western has considered the above actions and comments in preparing the Energy Planning and Management Program proposal. As public review of this proposal progresses, Western may find it desirable to independently develop the Power Marketing Initiative and the Energy Management Program (EMP). When adopted, the Energy Management Program portion of the Energy Planning and Management Program will replace the existing G&AC.

PROPOSED ACTION: The Energy Planning and Management Program proposal has two major components: (1) A Power Marketing Initiative and (2) an Energy Management Program. The Power Marketing Initiative applies to most

customers whose firm electric service contract(s) expire after December 31, 1995, and prior to January 1, 2005. This would include customers of Western's Pick-Sloan Missouri Basin Program-Eastern Division, Loveland Area Projects, and Central Valley Project. The Energy Management Program would apply to all Western firm power customers, including member-based associations and their members.

The essence of the Energy Planning and Management Program is to have stable long-term power resources through greater efficiencies in electric energy use. The program goal is to link Western's hydroelectric resource allocations with long-term energy planning and efficient customer electric energy use. One purpose of this proposal is to provide Western's customers assurance of greater stability in planning for future resources.

The proposed Power Marketing Initiative includes an assurance of greater long-term stability for customers through (1) an extension of a major percentage of Federal power resource committed to firm power customers, (2) consideration of higher levels of resource extension for customers who follow the provisions of the Energy Management Program, and (3) a small resource pool for each Western Project for allocations and other uses based on criteria established through separate future public processes. Amounts to be extended under (1) and (2) above will be based on several factors including comments received through the public process.

The proposed Energy Management Program would include (1) opportunities for customers to choose among different energy management program requirements, such as an integrated resource plan option, a performance plan option, or other options resulting from the public process; (2) an energy management customer performance period to be determined, but not to exceed 5 years; (3) periodic customer profile information; and (4) renewal of Western's commitment to assist customers with energy management technologies. Small customers may opt for a simpler approach to meet EMP requirements. Western will not dictate supply- or demand-side activities for each customer's system.

Western proposes to apply the following criteria to all EMP plans:

1. All actions taken should either maintain or enhance existing energy services provided to consumers served by Western's customers (i.e., either power end-users or member utilities).

2. Savings or benefits from actions taken should equal or exceed investment and operational costs over some reasonable period of time for both demand-side management alternatives and renewable energy investments.

3. EMP elements should produce measurable energy and/or capacity benefits as a result of customer investments in the EMP.

4. EMP elements should demonstrate sensitivity to environmental impacts and environmental values.

After reviewing our Guidelines and Acceptance Criteria during a public process that included 17 public meetings, and comments from affected customers and members of the public, Western began developing the proposed Energy Planning and Management Program. Western used these comments in preparing this proposed action. Further refinements and alternatives to the Energy Planning and Management Program are expected during the public participation process.

SCHEDULE: The public participation process will take about 24 months. This process includes public information meetings, environmental compliance meetings, public review of the published draft program, and publication of a final rule to document Western's decision whether to proceed with an Energy Planning and Management Program. Western expects to conduct an environmental impact statement (EIS) on this proposal. A separate **Federal Register** notice announcing the dates for public information meetings on this proposal and EIS scoping meetings will be published in the near future. Meetings are expected to begin in June. Public comment forums will be scheduled before issuing a final **Federal Register** notice. Publication of the final rule is anticipated in 1993.

Written comments on the proposed Energy Planning and Management Program should be submitted to Western by July 31, 1991. Comments would be particularly appreciated on the desirability of linkage, the attributes of any resource extension (including the amount and term), and on EMP options (including a definition of a "small" customer). All comments received on the Program to date will also be considered.

Determination Under Executive Order 12291

Executive Order 12291 dated February 17, 1981 (46 FR 13193, February 19, 1981), requires an agency to prepare a regulatory impact analysis before publishing a major rule. Western will determine if an analysis is required to comply with the Executive Order.

Regulatory Flexibility Analysis

The Regulatory Flexibilty Act of 1980 (5 U.S.C. 601 *et seq.*) requires each agency to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. These requirements can be waived if the agency head certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. Western will determine if an analysis is required to comply with the Act.

Paperwork Reduction Act of 1980

To comply with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), reporting provisions in this proposal will be evaluated to assess the need for an additional information collection clearance from the Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: To receive information as this proposal progresses, to submit written comments, or for additional information, please call or write:

Marlene A. Moody, Assistant Administrator for Power Management, Operations, and Maintenance, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401–3398, (303) 231–1518

Warren L. Jamison, Assistant to the Administrator for Conservation, Environment, and Safety, Western Area Power Administration P.O. Box 3402 Golden, CO 80401–3398 (303) 231–7945

James D. Davies, Area Manager, Billings Area Office, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800, (406) 657–6532

Thomas A. Hine, Area Manager, Phoenix Area Office, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2453.

Stephen A. Fausett, Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3700, (303) 490–7201

David G. Coleman, Area Manager, Saramento Area Office, Western Area Power Administration, 1825 Bell Street, Suite 105, Sacramento, CA 95825–1097, (916) 649–4418

Lloyd Greiner, Area Manager, Salt Lake City Area Office, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606, (801) 524–6372.

Issued at Golden, Colorado, April 9, 1991.

William H. Clagett,

Administrator.

THE ENERGY PLANNING AND MANAGEMENT PROGRAM

Section I—Summary

The Energy Planning and Management Program is a proposal by Western to link Western's power resource allocations with long-term energy planning and efficient electric energy use by Western's customers. The Energy Planning and Management Program has two major components: a Power Marketing Initiative and an Energy Management Program (EMP). A critical part of this proposal is coordinating power resource allocations under Western's Power Marketing programs with a new Energy Management Program. The EMP replaces Western's Guidelines and Acceptance Criteria (G&AC) of the Conservation and Renewable Energy (C&RE) Program.

Energy Planning and Management Program objectives are to:

—Encourage efficient use of electric energy by Western's customers.

—Promote consideration of cost-effective, demand-side management alternatives and renewable resources among Western's customers.

Power Marketing Initiative. Major features of the Power Marketing Initiative include:

—An assurance by Western of greater long-term resource stability for its customers in order to facilitate long-term energy planning.

—Broad application of the Power Marketing Initiative. However, based on information obtained through the public involvement process, Western may tailor parts of this initiative to the unique needs of various Western Projects.

—Extension of a major percentage of the Federal resources committed to firm power customers upon publication of the final rule.

—Consideration of higher levels of Federal resource extensions to customers who follow the provisions of the EMP.

—Establishment of a small resource pool for each Western Project made up of, but not limited to, the amount of Western resources not extended. Western proposes to use each resource pool based on criteria to be established through a separate future public process.

Extension of resources and long-term allocations from each project resource pool are one-time activities and will form Western's power marketing plan for the next contract period. The Energy Management Program will be ongoing.

Energy Management Program. Major features of the Energy Management Program include:

—The opportunity for most customers to choose among different compliance options.

—A proposed option for customers to develop an Integrated Resource Plan (IRP). Customers choosing this option would develop their own plans within general criteria.

—A proposed option for a Performance Plan using technologies that result in annual benefits, measured in energy and/or capacity. This option would give credit for actions taken during a fixed performance period, as well as past actions beginning at some determined point in time, and which still produce ongoing energy or capacity benefits.

—Other options which may be developed during or result from the public participation process.

—An energy management customer performance period will be determined, but would likely be set at not more than a 5-year period.

—Customer profile data on a periodic basis.

Section II—Power Marketing Initiative

Background: Western's firm power allocations are a commitment by the Administrator to contract for firm electric service from Federal generation, supplemented with firming purchases from other resources, typically for 10 years or more. Municipalities, Rural Electrification Administration-financed cooperatives, and other publicly owned, nonprofit organizations have preference to purchase Federal power under Reclamation law. Other requirements may also include the means to receive and distribute electric power to the preference load, and execution of an electric service contract with Western within a given period of time, usually 6 months to 1 year. Although the majority of resources have up to now been offered to existing customers, they have no guarantee that contract commitments will be extended or reallocated to them beyond current contract periods. Some uncertainty is associated with long-term power availability marketed by Western. The proposed Power Marketing Initiative mitigates this uncertainty.

Western proposes to assure existing customers that a major portion of resources under contract will be made available to them beyond current contracts. Western's goals are to balance its customers' need for greater stability in Federal hydroelectric resource availability with the need for incentives so customers can assess long-term resource alternatives and evaluate the use of cost-effective energy management measures to meet their long-term load requirements.

Applicability: Western proposes to apply the Power Marketing Initiative to customers whose firm electric service contract(s) expire after December 31, 1995, and before January 1, 2005, if consistent with other contractual and legal rights. Western Projects proposed to be covered by this Power Marketing Initiative include the Pick-Sloan Missouri Basin Program-Eastern Division, Loveland Area Projects, and Central Valley Project (CVP). Application of this Power Marketing Initiative to the Salt Lake City Area Integrated Projects resources will be determined and published after its electric power marketing environmental impact statement is completed and associated marketing criteria and contracts are implemented. This Power Marketing Initiative does not apply to CVP resources under contracts expiring in 1994. Those CVP resources are the subject of an allocation process initiated by a separate **Federal Register** notice (54 FR 33064). Western also proposes to evaluate possible further application of this Power Marketing Initiative at least 10 years before the termination of other Western firm electric service contracts that expire after January 1, 2005—principally the Parker-Davis and Boulder Canyon Projects. Determination of further application of this Power Marketing Initiative will be published after an informal consultation process.

This proposed Power Marketing Initiative may be tailored to meet the needs of individual Western Projects based on information and comments received during the public involvement process. This initiative, including modifications for individual Western Projects, and allocation criteria for each Project resource pool would be the marketing plan for each Project.

Firm Power Resource Commitment Extension: Western proposes to make an extension of firm power resource commitments for a period of 10 years or more of a major percentage of the capacity and energy amounts under applicable firm electric service contracts at the end of the existing contract period. Western believes an equal percentage extension for all customers is reasonable. However, Western will evaluate graduated scales of resource extensions during the public involvement process.

Western will also pursue the possibility of making higher levels of

Federal resource extensions to customers who follow provisions of the EMP.

The percentage and levels of resource extensions will be based on several factors including comments received during the public process.

It requested during the public involvement process, the resource extensions could be designed to be firm to the maximum extent possible. Under such a scenario, any reductions to marketable resources resulting from water depletions, project use and other priority power needs, modified operations, or other factors are proposed to be taken from a resource pool or supplied from additional firming purchases to the extent possible. Western could also design the extensions to retain the right to reduce contract commitments, if necessary, because of reductions in the amount of resource that Western determines is available to market.

Resource Pools: Western proposes to include existing Federal resource commitments not extended, new resources Western may acquire, terminated contract(s), or other increases to existing marketable resources, in small resource pools available for allocation from each individual Western Project. Uses of each Project resource pool will be determined using comments from the public participation process. Proposed uses include at least water depletions and modified hydroproject operations, adjustments to marketable resources due to revised long-term hydrology forecasts, reductions to marketable resources due to environmental constraints, additional allocations to existing customers, potential allocations to new customers, and regional power incentive programs involving short-term sales.

Western will determine contract terms and allocation amounts for the pools after completing a future public process. Energy management accomplishments and other criteria promoting program goals are proposed to be considered in allocating such resource, but may not be the only criteria. Marketing and allocation criteria will be developed for each Western Project resource pool. Environmental compliance documentation may be developed for each marketing plan as required or appropriate.

Process: Resource extensions and allocations from each Project resource pool will take effect when existing resource commitments terminate. These dates vary from the year 2000 for the Pick-Sloan Missouri Basin Program-Eastern Division to 2004 for the Central Valley Project and the Loveland Area Projects. Western proposes to offer initial resource commitment extensions to customers within 90 days after publishing of the final rule. This is tentatively scheduled during 1993. The offer will, if appropriate, discuss extension of an additional percentage of Federal resource, amount to be determined, contingent upon Western's acceptance of a customer's EMP plan. Existing resources will be extended by notice to customers. Resource extensions not accepted by customers are proposed to be included in each Project's resource pool.

Western proposes to complete allocations from each Project resource pool at least 3 years before termination of existing electric service contracts. The marketing plans and allocations will be published in the Federal Register.

Modified contract lanaguage may be required to place resource extensions or allocations from each Project resource pool under contract.

Section III—Energy Management Program

Background: Western conducted a public involvement process on its C&RE program in March and April 1990. This included 17 public meetings in 13 of the 15 States Western serves. Western also received written comments from 84 organizations. Comments continue to be received on the G&AC. From the wide range of comments, four general areas of concern were identified: equity, flexibility, reporting, and quantification of program benefits.

Applicability: The EMP is proposed to replace the G&AC. The EMP would apply to customers, including member-based associations (MBA) and their members, who purchase long-term firm Federal power from Western. The EMP would likely be reviewed every 5 years.

Profile Data Requirements: Western proposes all customers provide an annual update of information for implementing and evaluating the EMP. Identification data and current supply and demand information could be used for (1) analyzing overall program impacts, (2) comparative analysis and annual reporting on program benefits, (3) identifying basic supply and load or consumption data for EMP plan evaluations, and (4) assisting Western in targeting technical assistance for customers. Data proposed for such periodic customer updates are shown in appendix A.

Period of Performance: A performance period would likely cover a period not exceeding 5 years.

Western Assistance: Western proposes to continue providing assistance to customers. Assistance includes workshops, equipment loan programs, technical sessions, peer group on-site evaluations, technical analysis, and other support.

Customer Requirements: Customer plans might contain such items as definite goals and schedules, encourage cost-effective energy management improvements and demand-side management practices to ensure available supplies of hydroelectric power are used in an economically efficient and environmentally sound manner, and support and promote the increased use of renewable resources to meet future needs.

Customers, including MBAs and their members, would be responsible for developing EMP plans including plan content, scheduling, implementation, funding, execution, and associated reporting required as part of this plan.

Options: Several EMP options may be offered as a result of the public participation process. Proposed EMP options may vary with customers based upon factors such as size or type. Public comment is encouraged on the definition of a "small" customer, which could be based on factors such as number of meters, amount of power purchases from Western, and total annual sales or consumption. For customers who are larger than a determined value, the proposed options outlined below and discussed in more detail in appendices B and C may be appropriate. Specifically, Western proposed that any customer could choose to develop and implement either an Integrated Resource Plan or a Performance Plan.

An Integrated Resource Plan option is proposed for customers who choose to integrate plans for both demand- and supply-side resources. IRPs approved by other Federal agencies, State agencies, or other regulatory bodies would likely satisfy Western's criteria. A comprehensive IRP would usually cover utilities concerned with supply-side and demand-side decisions. A single plan could cover many utilities; i.e., an IRP could be submitted by an MBA on behalf of all or a portion of its members. Conversely, a municipality purchasing power from Western and from an investor-owned utility could be the only entity covered by an IRP. The degree to which such a municipality could address supply-side options may be controlled by the terms of a supplemental power contract with the investor-owned utility. Appendix B details the proposed required standards.

Under a Performance Plan option, customers would develop and implement a plan to produce measurable energy and/or capacity benefits equal to a percentage of a customer's total annual sales or consumption. A base year would be established as a performance target, and credit could be given for actions taken during the defined performance period as well as past actions that are still producing ongoing quantifiable energy and/or capacity benefits, since a specified point in time. Appendix C details proposed standards for this option.

Western recognizes that some small customers could find it very difficult to implement either of these two options and suggests a different type of energy management plan for such customers. For those customers who either fall below the value determined as described above or who are purely electrical end-user entities (e.g., industrial customers), a simpler option may be proposed for development. EMP plans for such customers may include (1) an energy efficiency plan with schedules, goals, and quantification methods for their own direct energy use and (2) development and implementation of an ongoing energy management education program.

Western also proposes to consider accepting previously approved and implemented energy or water efficiency plans submitted to other Federal or State governmental agencies. This could be applied to certain Western customers such as Federal or State institutions and installations, and irrigation districts without utlity responsibility. At a minimum, these customers might be required to provide an energy efficiency plan with schedules, goals, and quantification methods for their own direct energy use.

Penalty Provision: The existing contract provision implementing the C&RE Program provides a 10-percent power withdrawal penalty for noncompliance with C&RE requirements. Western will comply with existing contract terms, and this **Federal Register** notice does not purport to modify them.

BILLING CODE 6450-01-M

APPENDIX A - PROPOSED CUSTOMER PROFILE DATA REQUIREMENTS

CUSTOMER ANNUAL PROFILE DATA

Western Area Power Administration

For 12-month period: _____, 19__ to _____, 19__

Customer Name:	
Address:	
Customer C&RE Contact:	Phone: ( )
Customer Profile Data Contact:	Phone: ( )

Type of Customer (Check applicable box):

[] Distribution Coop [] Irrigation Districts [] State Agency [] Federal Agency [] PUD / PPD
[] Municipality [] Irrigation Districts w/o Supply or Distr [] Joint Action / G&T [] Investor Owned
[] Joint Action w/o Supply or Distr. [] Other (Specify) _____

Member of which parent organization (if applicable):

SECTOR	METERS	SALES/USE (KWH)	REVENUES ($$)
Residential			
Commercial			
Industrial			
Agricultural			
Own Use			
Sales for Resale			
Losses			
Other			
TOTALS			

System Peak (KW):	Month Peak Occurred:

RESOURCES AND FUEL TYPE FOR GEN	INSTALLED CAPACITY (KW)	PURCHASED CAPACITY (KW)	ENERGY SUPPLY (KWH)	TOTAL COST ($$$)
Western Area Pwr Admin				
Purchases - Total Firm				
Purchases - Total Non-Firm				
Own Generation - Total Coal				
Own Gen - Total Gas/Oil				
Own Gen - Total Hydro				
Own Gen - Total Other Fuel				
TOTALS				

BILLING CODE 6450-01-C

Appendix B—Proposed Standards for an Integrated Resource Plan

An IRP report submitted to Western for approval is proposed to be a summary document, with details available on Western's request. The integrated resource planning process involves laying out in a disciplined manner, and with periodic review, a plan of action to meet electrical system requirements for which the utility is responsible. An IRP delineates decision options and milestones on both supply and demand side and pursues least-cost actions. An IRP is possible for both utilities with surplus power or facing their next resource acquisition decision, and is also possible for both large and small utilities that may or may not have direct control over generation option decisions of their power supplier.

Western standards for an IRP are proposed to include a brief (2 to 3 pages) summary of specific goals and schedules for implementing the IRP, an estimate of implementation costs versus avoided costs, a statement of criteria for monitoring actual performance against planned actions, and a brief notation explaining how the customer IRP meets Western's criteria. The IRP should identify specific quantifiable results in energy and capacity, milestones, and resource expenditures. Environmental impacts associated with IRP options should be identified and considered in resource selection. Upon implementing an IRP, a plan to evaluate results should be defined. At the end of each performance period, Western proposes to review actual achievements against defined goals. It is proposed that an acceptable IRP contain the following:

1. Load Forecasts: A range of most probable forecasts of future load.

2. Demand-Side Resource Assessment: An assessment of several demand-side management strategies based on consumers and load profiles.

3. Supply-Side Resource Assessment: An assessment of generating strategies. Examples include renewable resources, cogeneration, power purchases, plant life extensions, and thermal resources.

4. Resource Evaluation: A comparative evaluation of supply- and demand-side resources using a consistent economic evaluation method. Evaluation should include impacts on all suppliers, distribution entities, and consumers involved. Selection process and criteria should be explicit.

5. Action Plan: A short-range plan outlining actions to implement the IRP. The expected results of such a short-term plan should be linked to the long-term resource plan.

6. Long-Range Plan: A long-range plan outlining actions to implement the IRP.

7. Verification Process: A utility could be required to verify the IRP it develops. This process could involve a review by (1) the general public served by the utility in developing an IRP, (2) coordination with local governmental bodies such as a publicly elected Board of Directors or a City Council with utility oversight, (3) Western review and approval of the IRP action at the time of IRP submittal, or (4) review by an independent third party determined by Western and the customer. The exact approach and required content will be a subject for discussion during the public involvement process.

A Western IRP typically should not exceed a reasonable and manageable number of pages, and would likely vary with customer size. A page limit will likely be determined during the public process. To be meaningful, an IRP would address impacts to suppliers, distribution utilities, and end users. An IRP developed by a member-based association customer on behalf of its entire member systems should provide written documentation and verification of active participation by members in its development and implementation. Such documentation should include individual discussion of load profiles and types of consumers served by each member.

Appendix C—Proposed Standards for Performance Plan

It is proposed that customers may choose to comply with EMP requirements by achieving a minimum level of performance based on new or ongoing capacity or energy benefits or renewable generation. Ongoing is defined by Western as past EMP activities currently producing measurable annual energy and/or capacity benefits.

Western proposes customers selecting this option demonstrate ongoing annual energy and/or capacity benefits equal to a percentage of a defined base year. Such a performance requirement would be defined as a percentage of the defined base-year sales or consumption resultant from EMP actions initiated by the utility. EMP actions during a set performance period coupled with past actions initiated since a defined past date, and still producing ongoing quantifiable benefits in energy and/or capacity, would be given credit under a Performance Plan option. Exact amounts to be saved, or generated in the instance of renewable technologies, and appropriate periods of credit for current and past performance will be determined through the public process.

Performance benefits may be either energy efficiency improvements or power generation in the case of renewable resources. At the end of each performance period, Western proposes to review actual achievements against the approved plan.

[FR Doc. 91-9262 Filed 4-18-91; 8:45 am]
BILLING CODE 6450-01-M

Floodplain/Wetlands Involvement for the Hoyt Substation Additions; Morgan County, Colorado

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of floodplain/wetlands involvement and opportunity to comment.

SUMMARY: The Department of Energy (DOE), Western Area Power Administration (Western), is proposing to construct additions to its existing Hoyt Substation. The substation, located in rural Morgan County, Colorado, is approximately 175 feet by 200 feet in size. Western proposes to install new equipment at Hoyt Substation, and would expand the size of the substation to 330 feet by 340 feet, or by about 31 percent.

Pursuant to DOE's "Compliance with Floodplain/Wetlands Environmental Review Requirements," 10 CFR part 1022, Western has determined that this proposed project would involve activities within a designated floodplain area. The existing substation is shown next to an ephemeral stream on U.S. Geologic Survey topographic quadrangle maps, and Federal Emergency Management Agency shows the proposed expansion to be in a 100-year floodplain. Field investigations revealed that the surrounding area has been extensively modified by agricultural practices, the drainage appeared to be no longer active, and no wetland vegetation was present.

Western will prepare floodplain/wetlands assessment in accordance with Executive Order 11988—Floodplain Management, and Executive Order 11990—Protection of Wetlands.

The existing Hoyt Substation was constructed in 1950 utilizing concrete foundations and steel girders for electrical equipment. The substation provides electrical power to the Morgan County Rural Electric Association (REA). The REA in turn distributes this power to consumers in communities and on farms within Morgan County. Western's South Prospect Tap Study identified deficiencies in the Erie-Beaver Creek 115-kilovolt electrical system in

Northeastern Colorado. These deficiencies consist of low voltage and outage problems caused by load growth and insufficient reliability. The Hoyt Substation additions would include circuit breakers for each individual line and a bus tie breaker. This new switching equipment would greatly enhance system flexibility and reliability. Construction of the new switching facilities would be accomplished by Western.

DATES: Public comments or suggestions concerning the floodplain involvement of Western's proposed action are invited. Any comments are due by May 9, 1991.

ADDRESSES: Comments or suggestions should be sent to:

Mr. Stephen A. Fausett, Area Manager, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539-3003, (303) 490-7200

Mr. Gary W. Frey, Director, Division of Environmental Affairs, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401-3398

FOR FURTHER INFORMATION CONTACT: Mr. Rodney Jones, Environmental Specialist, Loveland Area Office, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539-3003, (303) 490-7371.

Issued at Golden, Colorado, April 9, 1991.

William H. Clagett,

Administrator.

[FR Doc. 91-9263 Filed 4-18-91; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3922-8]

Experimental Program to Stimulate Competitive Research (EPSCoR)

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for Applications (RFA), OER/EPSCoR-91.

SUMMARY: The Office of Exploratory Research of the Environmental Protection Agency (EPA) in supporting academic research in the areas of environmental science and engineering (S&E) announces interest in receiving special applications for support of planning grants. Those States previously chosen for participation in the Experimental Program to Stimulate Competitive Research (EPSCoR) at the National Science Foundation (NSF) are eligible to request support for special planning grants to improve and enhance nationally competitive environmental research programs conducted by academic institutions within their State.

DATES: The original and eight copies of the application must be received no later than the close of business June 12, 1991 to be considered.

ADDRESSES: The applications must be sent to: Grants Operation Branch (PM-216F), U.S. Environmental Protection Agency, Washington, DC 20460.

Application Kits may be obtained from: Research Grants Staff (RD-675), 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Dr. Deran Pashayan, Office of Exploratory Research (RD-675), Office of Research and Development, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 382-7445.

SUPPLEMENTARY INFORMATION:

I. Background

The Fiscal Year 1991 Congressional Appropriations directs EPA's Office of Research and Development to provide a total of $1.0 million to support the Experimental Program to Stimulate Competitive Research (EPSCoR). In Fiscal Year 1991, approximately $1.0 million will be used for planning grants given to those States previously chosen for participation in the EPSCoR program at the National Science Foundation (NSF). The purpose of the EPA/EPSCoR initiative is to enhance the capabilities of designated States to conduct nationally competitive environmentally related research programs. Eligibility for these planning grants will be restricted to the designated NSF/EPSCoR statewide committees for the following States and Territories: Alabama, Arkansas, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, Wyoming, and the Commonwealth of Puerto Rico. The EPSCoR committees within the eligible States are encouraged to apply for these special research planning grants. The EPA/EPSCoR goals are to improve the quality and capability of the environmental science and engineering (S&E) research and training programs at universities and colleges within the State; and to effect lasting improvements in the State's scientific and technical infrastructure through increased funding for environmental research, education, and related activities by Federal, State, and local governments, and the private sector. Applications for planning grants under the EPA/EPSCoR program will be considered for support by EPA for the development of a six-year statewide plan that promotes and enhances environmental research and human resources development in the EPSCoR States.

II. Scope

In each of the eligible States, the ad hoc EPSCoR committee may prepare a proposal to EPA requesting up to $50,000 to prepare a comprehensive six-year environmental research and human resources development plan with milestones. Application for a planning grant shall include a project narrative that describes the State's approaches for assessing existing weaknesses and strengths in environmental research areas and for designing strategies for promoting and enhancing its environmental research programs. Each application for a planning grant should:

1. Develop a comprehensive inventory of existing research capabilities that could be brought to bear on environmental research activities including human resources, equipment, facilities within academia, industry, State and Federal agencies.

2. Identify current and future priority areas for environmental research which are important to the State and nation, and estimate the potential resources available within the State to meet future needs in these areas.

3. Develop strategies to generate significant improvements in the quality and capability of S&E research in environmental areas within the State. Improvements in ancillary activities such as S&E training and technology development in environmental areas are also expected. The plan should give special attention to: Effective utilization of available resources within academia, government, and the private sector; the development of new or existing research areas to nationally recognized level of excellence; and the management and financing of a comprehensive, long-term improvement plan for science and engineering by both non-Federal and Federal sources.

4. Identify existing and potential barriers to the future development of nationally recognized centers of research and related training or technology.

5. Identify the projected impact on the science and engineering pipeline in terms of the number of faculty and graduate students to be affected, including underrepresented minorities, women, and the disabled.

6. Define strategies for attracting and involving high-quality students in hands-on research (undergraduate, graduate,

postdoctoral) with industrial, EPA, and other Federal laboratories.

7. Clearly describe the relationship between the EPSCoR activities in the other agencies and the EPA/EPSCoR program.

8. Clearly describe the project management activities, delineating the specific duties, responsibilities, and qualifications of the EPSCoR committee, project manager, and project staff. Also provide a description of plans to use consultants and/or experts to carry out specific project activities and their qualifications to do so.

III. Mechanism of Support

Assistance under this research planning grant will be through the EPA's Research Grants Program. Responsibility for the planning, direction, and execution of the proposed activity in the planning grant will be solely that of the applicant if approved for funding. A single award will be made to the organization submitting the proposal (grantee) who will serve as fiscal agent for the project. Each applicant's request will not exceed $50,000. Each application submitted for planning grant support must include a minimum cost share of 50 percent of the total project costs from non-Federal sources.

IV. Application

Each application will consist of Application For Federal Assistance forms (standard forms 424 and 424A), separate sheets providing the budget breakdown for each year of the project, curriculum vitae for the project director and other participants, abstract of the proposed project, and a project narrative. All certification (drug-free workplace, etc.) forms must be signed and included with the application. Application forms, instructions, and other pertinent information are contained in the Federal grant application kit.

V. Special Instructions to the Applicant

1. The narrative portion of the application must not be more than a total of 25 pages (regular size type—no smaller than elite standard 8½" × 11" pages) including tables, graphs, and figures.

2. The total project period for the development of the planning grant must not exceed eight months.

3. Applications must be identified by printing "OER/EPSCoR–91" in the upper right-hand corner of Application Form SF–424. The absence of this identifier from an application may lead to delayed processing or misassignment of the application.

4. In place of the Catalog of Federal Domestic Assistance Number, use the identifier "Office of Exploratory Research".

VI. Application Review

All applications in response to this solicitation will be evaluated at a single meeting of a review panel which will evaluate each planning proposal according to its merit as a basis for recommending agency approval or disapproval.

VII. Application Submission

The original and eight copies of the application must be received no later than the close of business, June 12, 1991, to be considered. The applications must be submitted by an EPSCoR committee through a fiscal agent, empowered to accept Federal grants, which agrees to act on behalf of the State in this endeavor. Grant applications must be submitted to: Grants Operations Branch (PM–216F), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Dated April 11, 1991.

Robert Papetti,

Director, Research Grants Staff.

[FR Doc. 91–9247 Filed 4–18–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3922–6]

Summary Report on Issues in Ecological Risk Assessment

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of availability of report on issues in ecological risk assessment.

SUMMARY: This notice announces the availability of a report entitled "Summary Report on Issues in Ecological Risk Assessment" (EPA/625/3–91/018), which summarizes a series of meetings held on ecological risk assessment issues. By highlighting topics of interest to ecological effects experts and federal and state risk assessors, this report introduces Agency staff and the public to some of the issues, principles, and practices that will be at the core of the Agency's new program for developing ecological risk assessment guidelines.

ADDRESSES: To obtain a single copy of the report, interested parties should contact the ORD publications office, CERI-FRN, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, Tel: (513) 569–7562 or FTS: 684–7562. Please provide your name and mailing address and request the document by the title and EPA number.

The summary report will also be available for public inspection and copying in the Public Information Reference Unit of the EPA Headquarters Library, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Thomas, Technical Liaison, Risk Assessment Forum, Tel: (202) 475–6743 or FTS: 475–6743.

SUPPLEMENTARY INFORMATION: From March through July, 1990, the EPA Risk Assessment Forum sponsored a series of meetings to assist in planning future ecological risk assessment guidelines at the EPA. Experts in ecology and ecological risk assessment met at a series of four colloquia to discuss selection of an appropriate ecological risk assessment paradigm, uncertainty issues in hazard and exposure assessment, and population modeling. In addition, representatives from state and other federal agencies met to discuss how ecological risk assessments were conducted in their organizations, and the EPA Science Advisory Board provided an informal consultation on the development of ecological risk assessment guidelines.

The summary report provides highlights of the presentations and discussions at each of the meetings, and identifies major issues related to future development of ecological risk assessment guidelines at the EPA. Minutes from each of the sessions are included as appendices. Based in part upon information and advice gathered during the meetings, the EPA has initiated a three-part program to develop ecological risk assessment guidelines. During 1991, the EPA will prepare a "framework" document that proposes general concepts and principles, a collection of site-specific case studies that illustrate the state-of-the-practice in ecological risk assessment, and a planning report that proposes specific areas to be covered in future guidelines. Additional information on these activities will appear in the Federal Register during 1991.

Dated: March 15, 1991.

Erich Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 91–9248 Filed 4–18–91; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL-3923-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 1, 1991 through April 5, 1991 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 5, 1991 (56 FR 14096).

Draft EISs

ERP No. D–BLM–L67026–AK Rating EC2, A–J Mine Project Reopening, Construction and Operation, Issuance of Right-of-Way Permit for Permanent Disposal of Tailings on Federal Lands in Sheep Creek Valley, section 10 and 404 Permits, and NPDES Permit, City and Borough of Juneau, AK.

Summary

EPA has environmental concerns with this document and believes that information is lacking. EPA's concerns are based on the potential for the proposed project to result in direct adverse impacts to air quality, freshwater aquatic and riparian habitat, local intertidal and subtidal marine habitat, recreation and visual resources, and indirect cumulative adverse impacts to air and water quality, traffic, housing availability, and local public services and facilities.

ERP No. D–VAD–L99002–WA Rating EC2, Seattle-Tacoma Area National Cemetery Construction Alternative Site Selection, Illahee Site in Kitsap County, Sultan Site in Snohomish County, and Seatac and Tacoma Sites in King County, WA.

Summary

EPA expressed environmental concerns associated with groundwater impacts.

ERP No. DS–NSF–A84024–00 Rating EC2, U.S. Antarctic Program Continued Operation, Updated Information, Implementing the Safety, Environment and Health (SEH) Initiative Antarctic.

Summary

EPA expressed concern that additional energy conservation and waste minimization efforts be considered in the preferred alternative for the U.S. Antarctic Program. EPA also commented that the draft supplement EIS needs to include more specific schedules for the measures identified in the DSEIS, particularly including reduction of support personnel and waste management planning. EPA also requested that additional information be included on cumulative impacts and coordination of scientific activity. EPA generally found the structure of the EIS to be sound and the range of alternatives considered to be sufficient, although EPA had a number of suggestions for additional information which should be included in the DSEIS.

Final EISs

ERP No. F–AFS–J65163–MT, Lakalaho Timber Sale and Road Construction, Implementation, Flathead National Forest, Glacier View Ranger District, Flathead County, MT.

Summary

EPA believes that revisions to the preferred alternative in the final EIS will better protect water quality and fisheries.

ERP No. F–BIA–K85062–00, Spirit Mountain Planned Community Development, Lease Approval, section 404 Permit, Fort Mojave Indian Reservation, Clark County, NV and San Bernardino County, CA.

Summary

EPA expressed continuing environmental objections with the proposed project's potential indirect and cumulative impacts to air quality, water quality, water supply, wildlife, wetlands and riparian habitats. It appears that the specific acreage proposed for development has already been leased prior to completion of the environmental impact process. EPA noted that the range alternatives in the EIS may be so narrow as to preclude a rigorous analysis of all reasonable alternatives.

ERP No. F–FHW–F40297–MN, Shepard/Warner Road/East CBD Bypass Study Corridor Improvements, Randolph Avenue to I–35E, Funding and COE Permit, City of St. Paul, Ramsey County, MN.

Summary

EPA believes concerns have been adequately addressed.

ERP No. F–USN–L11011–AK, Second Relocatable-Over-The-Horizon-Radar (ROTHR) System/Surveillance Installations in the Northwest Pacific Base Camp Facilities, Improvement and Construction, section 404 and 10 Permits, NPDES Permit, Amchitka Island, AK.

Summary

EPA believes this document adequately addresses potential adverse environmental impacts associated with the proposed project with reasonable and appropriate mitigation measures.

ERP No. FS–COE–C35008–00, Port of New York-New Jersey Dredged Material Disposal Project, Use of Subaqueous Borrow Pits for Disposal of Dredged Material Designation, Updated Information, NY and NJ.

Summary

EPA's comments on the draft EIS has been adequately addressed. However, EPA commented on disposal implementation and requested: (1) The first pit filling program be a demonstration project incorporating operational planning and control measures to minimize the potential adverse environmental impacts from the disposal action; (2) The opportunity to sign-off on all controls and future permit actions that include the use of the borrow pits; (3) that in most cases, new pits be used rather than existing pits; and (4) that given the programmatic nature of the project, EPA would like to formalize the management controls and other operational procedures in a memorandum of agreement.

ERP No. FS–COE–L39006–AK, Kodiak Harbor Additional Moorage Construction, Implementation, Kodiak Island, AK.

Summary

EPA finds this project to be satisfactory and includes reasonable and appropriate mitigation measures.

Dated: April 16, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91–9281 Filed 4–18–91; 8:45 am]

BILLING CODE 6560–50–M

[ER-FRL-3923-1]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382–5073 or (202) 382–5075.

Availability of Environmental Impact Statements Filed April 8, 1991 Through April 12, 1991 Pursuant to 40 CFR 1506.9.

EIS No. 910108, Draft EIS, AFS, AK, Crystal Mountain Communication Site, Designation/Non Designation, Tongass National Forest, Stikine Area, AK, Due: June 3, 1991, Contact: Mark Hummel (907) 772–3841.

EIS No. 910109, Final EIS, FHW, ND, Washington Street Corridor

Improvements, Century Avenue to Bismarck Avenue, Funding, Bismarck, Burleigh County, ND, Due: May 20, 1991, Contact: John C. Kliethermes (701) 250–4204.

EIS No. 910110, Draft EIS, AFS, UT, Brighton Ski Resort Area Development and Master Plan, Implementation and section 404 Permit, Wasatch-Cache and Uinta National Forests, Big Cottonwood Canyon, Saltlake and Wasatch Counties, UT, Due: June 3, 1991, Contact: Kimberley Vogel (801) 524–5042.

EIS No. 910111, Final EIS, COE, LA, Comite River Basin and Tributaries Flood Protection Plan, Implementation, Amite River Basin, Baton Rouge and Livingston Parishes, LA, Due: May 20, 1991, Contact: Bill Wilson (504) 862–2527.

EIS No. 910112, Revised Draft EIS, COE, GA, SC, Savannah Harbor Comprehensive Study and Harbor Deepening, Additional Information, Implementation, Chatham County, GA and Jasper County, SC, Due: June 3, 1991, Contact: David Crosby (912) 944–5781.

EIS No. 910113, Final EIS, AFS, IN, Hoosier National Forest Land and Resource Management Plan Amendment, Implementation, Several Counties, IN, Due: May 20, 1991, Contact: Regis Tuney (812) 275–5987.

EIS No. 910114, Regulatory Draft EIS, OSM, Revisions to the Permanent Program Regulations Implementation section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Addressing Valid Existing Rights (VER), Due: June 18, 1991, Contact: Andrew F. DeVito (202) 343–5150.

EIS No. 910115, Draft EIS, DOE, WA, ID, SC, New Tritium Production Reactor Capacity Facilities, Siting, Construction and Operation, Implementation, Hanford Site near Richland, WA; Idaho National Engineering Laboratory near Idaho Falls, ID and Savannah River Site near Aiken, SC, Due: June 17, 1991, Contact: Richard W. Englehart (202) 586–0297.

EIS No. 910116, Draft EIS, USN, WA, CA, US West Coast Homeporting Program for Fast Combat Support Ships (AOE–6 Class), Implementation, Long Beach Naval Station, North Island Naval Air Station and San Diego Naval Station, CA and Puget Sound Naval Shipyard, Bremerton, WA, Due: June 3, 1991, Contact: Robert Schwarz (202) 433–3387.

EIS No. 910117, Draft EIS, COE, GA, Chattahoochee River National Recreation Area Sand/Gravel Dredging, section 404 Permit Issuance, Chattahoochee River, Gwinnett County, GA, Due: June 3, 1991, Contact: Bradley Foster (912) 944–5833.

Dated: April 16, 1991.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 91–9280 Filed 4–18–91; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

[Docket No. 91–19]

Actions To Address Adverse Conditions Affecting United States Carriers that Do Not Exist for Foreign Carriers in the United States/Japan Trade; Notice and Order of Investigations

Upon publication of this Notice and Order in the **Federal Register** the Federal Maritime Commission ("Commission" or "FMC") initiates an investigation of shipping conditions in the United States/Japan Trade ("Trade") under the Foreign Shipping Practices Act of 1988 ("FSPA" or "1988 Act"), 46 U.S.C. app. 1710a. This investigation seeks to determine whether conditions exist in the Trade which adversely affect the operations of United States carriers and which do not exist for Japanese carriers in the United States.

On October 18, 1990, the Commission issued an Order Requiring Information directed to the two United States carriers [1] and four Japanese carriers [2] which serve the United States/Japan Trade. By simultaneous **Federal Register** Notice, the Commission solicited relevant information from other interested persons. These actions resulted from allegations and information made available to the Commission concerning the Japan Harbor Transportation Association ("JHTA") and a fund JHTA established known as the Harbor Management Fund ("Fund" or "HMF"). The HMF became effective on October 1, 1989. The expiration date of the Fund was extended from March 31, 1990 until March 31, 1991. Available information also indicated that to finance the HMF, JHTA levied charges against U.S., Japanese and other carriers serving ports in Japan. Allegedly, these charges were used to promote and finance import distribution centers, a purpose and activity generally not considered to be the responsibility of ocean carriers. Also, it was alleged that the Fund's schedule of charges favored Japanese carriers and adversely affected U.S. carriers. Further, it was alleged that the Fund was supported, at least implicitly, by the Japan Ministry of Transport ("MOT").

To determine the accuracy of these allegations and to obtain additional relevant information, the Commission sought evidence regarding, *inter alia*, involvement of the Government of Japan ("GOJ") with the HMF; the origin of the HMF; HMF's purposes, uses and funding; the Fund's effect on ocean carriers, and any disparate impact upon U.S. carriers vis a vis Japanese carriers. In response to the Order Requiring Information, affidavits, documents and memoranda were submitted by the named Japanese and U.S. carriers. Comments responding to the **Federal Register** notice were submitted by a group of European based carriers,[3] the Maritime Administration, and the American Paper Institute, Inc.

These responses and comments provided substantial information with respect to the issues raised in the Order. Based on its review of that information, it appears to the Commission that:

(1) By threatening labor unavailability and instability, JHTA coerced payments from carriers into a fund (HMF) established by JHTA. The payments are based upon fees assessed on containers and other cargo carried to and from Japan;

(2) U.S. carriers receive no economic or other benefits from the payment of these fees;

(3) A number of former MOT employees have been and currently are employed by JHTA and its affiliates;

(4) MOT, as the authority that chartered JHTA as a "public interest" association, has refused to exercise its governmental powers to prevent JHTA from exceeding the scope of its charter thereby condoning and sanctioning the collection of HMF fees from U.S. and other carriers; The collection of fees is therefore a *de facto* governmental impost levied by JHTA.

(5) Japanese carriers, through their association, Japan Shipowners Port Council ("JSPC"), by agreeing to the HMF terms imposed by JHTA, left U.S. and other carriers with no option other than to accede to the terms agreed upon by JHTA and JSPC;

[1] American President Lines, Ltd. ("ARL") and Sea-Land Services, Inc. ("Sea-Land").

[2] Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha, Nippon Line System, Ltd.

[3] Ben-Line Containers Ltd., Hapag-Lloyd (Japan) Agencies Ltd., Maersk K.K., East Asiatic Co., Ltd. Norasia Lines Ltd., Stolt-Nielson Japan, POCL/John Swire and Sons (Japan) Ltd., Nedlloyd Lines, and Scan Dutch/Eurobridge Ltd.

(6) No fund to which Japanese carriers contribute in the U.S. is comparable to the HMF inasmuch as no such fund creates capital assets to be used in a manner unrelated to the obligations of ocean transportation; nor was any such fund in the U.S. established with comparable government involvement.

Accordingly, the Commission believes that the practices of the Government of Japan, Japanese carriers and persons in Japan providing maritime-related services result in the existence of conditions that adversely affect the operations of U.S. carriers in the U.S. oceanborne trade and do not exist for Japanese carriers in the United States.

Accordingly, the Commission institutes this investigation under the FSPA to determine whether U.S. carriers have been or will be adversely affected by the Fund, whether remedial action is required, and, if so, what those remedies should be.

In particular, the Commission directs the parties to address the following issues as well as any other issues that are believed to be relevant to the Commission's examination of the Fund under the standards of the FSPA. When facts are asserted, those facts should be set forth in detail in affidavits of knowledgeable persons and should include any documentary evidence in support of such affidavits.

1. Whether U.S. carriers have suffered or will suffer any identifiable and quantifiable adverse effect as a result of the HMF?

(a) Identify and quantify such adverse effects and appropriate remedies to address any conditions adversely affecting U.S. carriers.

2. Whether U.S. carriers and Japanese carriers benefit from the Fund?

(a) Identify and describe all benefits that U.S. carriers receive as a consequence of Fund expenditures.

(b) Identify and describe all benefits that Japanese carriers receive as a consequence of Fund expenditures.

(c) What is an "import distribution center"?

(1) What functions will such centers serve?

(2) What activities will be conducted at and by such centers?

(3) How will such centers be financed?

(4) Who owns the land that such centers will occupy?

(5) What will be the arrangements for rental of land or facilities by such centers? Who will be the lessees?

(6) Identify the owners of such centers.

(7) By whom will these centers be managed and operated?

(8) Describe all grants of permission, authorization and licenses that will be required from the Government of Japan in conjunction with acquisition of land, construction and operation of such centers.

(9) How will such centers benefit Japanese Carriers?

(10) How will such centers benefit U.S. carriers?

(e) How will the Fund serve to relieve port congestion in Japan?

What studies, plans or reports by the Government of Japan, Japanese carriers, U.S. carriers, JHTA, International Port Cargo Distribution Association ("IPCD") or other person providing maritime or maritime-related services in Japan address the existence of or relief from such port congestion. English language translations of such studies, plans or reports should be produced as attachments to initial affidavits submitted in this proceeding.

(f) How will the Fund serve to "stabilize labor" in Japan?

(1) What percentage of the Fund is or will be allocated to stabilizing labor? How will such Fund monies be used to stabilize labor? What accounting of expenditures will be required and will that accounting of expenditures be available to contributing carriers?

(2) With respect to stabilizing labor, how will the Fund, either directly or indirectly (through affiliates or otherwise) benefit Japanese carriers?

(3) With respect to stabilizing labor, how will the Fund, either directly or indirectly (through affiliates or otherwise) benefit U.S. carriers?

(4) What studies, plans or reports by the Government of Japan, Japanese carriers, U.S. carriers, JHTA, IPCD or other person providing maritime or maritime-related services in Japan address the existence of or relief from problems related to labor instability. English language translations of such studies, plans or reports should be produced as attachments to initial affidavits submitted in this proceeding.

3. What was the basis and method used for developing the HMF fee schedule? Identify all factors that were considered in establishing that schedule.

4. Whether as a consequence of commodities carried, relative market shares, method of carriage, available equipment, domestic versus foreign commerce, tax treatment or other factors, the HMF fee schedule operates to the advantage of Japanese carriers or to the disadvantage of U.S. carriers?

5. Whether and to what extent comparable conditions exist for Japanese carriers in the U.S.? In particular, compare and contrast the HMF with the following funds that have been established in the U.S.:

(a) Modernization and Mechanization Fund;

(b) Pay Guarantee Plan;

(c) Guaranteed Annual Income Program; and

(d) CFS assessments under the "Carrier-ILA Container Freight Station Trust Fund Agreement and Declaration of Trust."

To what extent did comparable conditions underlie the creation of these funds and the HMF? Produce, as attachments to initial affidavits in this proceeding, English language translations of any studies, plans or reports that address the need for establishing these funds.

6. Whether and to what extent the JHTA or others responsible for administering the HMF must account to contributing carriers for monies allocated or spent?

7. Whether and to what extent carriers that pay HMF assessments are able to monitor HMF assets and expenditures?

(a) To what extent does this ability or inability to monitor the HMF distinguish it from the funds listed in Question 5?

(b) Does this ability or inability of carriers to monitor the HMF, operate either directly or indirectly (through affiliates or otherwise) to the advantage of Japanese carriers or disadvantage of U.S. carriers?

(c) To date, what is the total amount of HMF monies spent? For what purposes were those expenditures made? When were the expenditures made?

(d) What expenditures of HMF monies have been projected? Allocated?

8. Identify by name, address, title or position with JHTA, and, if applicable with IPCD, each person pictured in Attachment 5, pages 18–19, to the Joint Affidavit of the Japanese Carriers submitted to the Commission on December 18, 1990. Which of these individuals are or were employed by or associated with MOT? Specify the capacity in which each individual was so employed by or associated with MOT, and the dates of such employment or association.

9. Identify all agents, officers and employees of JHTA during the period 1985 to present who were or are officials, employees or agents of MOT. For each such person, provide: Name, Business address, Position, Title, and Dates of service with both JHTA and MOT.

10. Whether JHTA, by requiring payments of HMF fees from carriers who neither receive benefits from the

Fund nor can monitor its assets and expenditures, exceeds the scope of its charter, and if so, whether MOT's refusal to intervene under its chartering authority constitutes *de facto* government approval of the JHTA and HMF?

11. For each category of cargo subject to Fund assessments (i.e., FEU's, TEU's, autos, etc.), what percentage of the cargo subject to Fund assessments is comprised of cargo carried in the Japan/U.S. Trade?

12. Identify all minutes, transcripts, records or reports of discussions or negotiations between the JHTA and the Japan Shipowners Port Council ("JSPC"), and between JHTA and the Japan Foreign Steamship Association ("JFSA"), and between JSPC and JFSA that occurred during the period January 1, 1988 through December 30, 1989, and related in any way to the HMF. English language translations of such minutes, transcripts, records or reports should be produced as attachments to initial affidavits submitted in this proceeding.

Proceedings under the FSPA are conducted within the framework of statutorily-imposed deadlines. Once initiated, the Commission must complete an investigation and render a decision within 120 days unless certain factors warrant a 90-day extension. Because of these time constraints, the proceeding will be limited to two rounds of simultaneous submissions by all parties. There will be an initial filing and a reply filing. Moreover, because of the time constraints, the proceeding will be conducted on the basis of written submissions only, without oral evidentiary hearings and without discovery. Any motions filed will not alter the deadlines established by the procedural schedule set forth below. In its discretion, the Commission may withhold ruling on such motions until a final order.

Any person seeking to participate as an intervenor must file its submissions in accordance with the procedural schedule established below. Moreover, any person interested in participating as an intervenor must file a notice of intention to intervene with the Commission's Secretary and serve such notice on all parties. The purpose of this notice is to ensure that intervenors will be served by all participating parties. The filing of a notice of intention to intervene, however, does not obligate a party to file a written affidavit or memorandum.

Now therefore, it is so ordered, That pursuant to section 10002(b) of the Foreign Shipping Practices Act of 1988, the Commission hereby initiates an investigation to determine whether, with respect to the JHTA and the HMF, any laws, rules, regulations, policies or practices of the Government of Japan, or any practices of Japanese carriers or other persons providing maritime or maritime-related services in Japan result in the existence of conditions that adversely affect U.S. carriers and do not exist for Japanese carriers in the United States and, if such adverse conditions are found to exist, what shall be an appropriate remedy or remedies.

It is further ordered, That Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha, and Nippon Liner System, Ltd. are each named Respondents in this proceeding;

It is further ordered, That American President Lines, Ltd. and Sea-Land Service, Inc. are each named United States carrier parties in this proceeding;

It is further ordered, That the Commission's Bureau of Hearing Counsel is made a party to this proceeding;

It is further ordered, That any person interested in participating in this proceeding shall file a notice of intention to participate as an intervenor with the Commission's Secretary by May 20, 1991;

It is further ordered, That such interested persons may participate in this proceeding in accordance with the filing schedule set forth below;

It is further ordered, That oral argument shall be heard on July 9, 1991.

It is further ordered, That the Commission may notify the parties of specific legal issues to be addressed at oral argument.

It is further ordered, That this proceeding is limited to the submission of affidavits of fact, memoranda of law and oral argument;

It is further ordered, That the responses to the Commission's October 18, 1990 Order Requiring Information that were filed by the two U.S. carrier parties and the four Japanese carrier respondents shall be made part of the record herein. If any party wishes a portion of its responses to be protected from public disclosure, that party shall file a motion requesting such protection by April 25, 1991, and shall identify the specific portions for which such protection is sought, and shall explain in detail why such protection is necessary.

It is further ordered, That this Notice and Order of Investigation be published in the **Federal Register**, and that a copy thereof be served upon Respondents;

It is further ordered, That this proceeding shall be conducted in accordance with the Commission's Rules in 46 CFR part 588;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be filed in accordance with rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, as well as being mailed directly to all parties of record;

It is further ordered, That all initial affidavits and memoranda of law shall be filed no later than May 30, 1991;

It is further ordered, That all reply affidavits and memoranda of law shall be filed no later than June 14, 1991; and

Finaly, it is further ordered, That pursuant to the terms of the Foreign Shipping Practices Act and the Commission's Rules in part 588, the final decision by the Commission in this proceeding shall be issued by August 13, 1991.

By the Commission.

Joseph C. Polking,

Secretary.

Appendix

Mr. George Hayashi, President, American President Lines, Ltd., 1800 Harrison Street, Oakland, CA 94612.

Mr. Alex Mandl, Chairman & Chief Executive Officer, Sea-Land Service, Inc., P.O. Box 800, Iselin, NJ 08830.

Mr. Tatsuhiko Tsuchihashi, President, "K" Line, New York Inc., Two World Trade Center, suite 9910, New York, NY 10048.

Mr. Masayuki Hirakawa, President, Mitsui O.S.K. Lines, Ltd., One World Trade Center, suite 2211, New York, NY 10048.

Mr. Akahiro Takei, Director, Nippon Yusen Kaisha—NYK Lines, 200 Plaza Drive, Secaucus, NJ 070960.

Mr. T. Kondo, President, Nippon Liner System (North America) Inc., One World Trade Center, suite 1000, Long Beach, CA 90831–1000.

[FR Doc. 91–9186 Filed 4–18–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Juan Esteban Borja, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board

of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 8, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Juan Esteban Borja, Quito, Ecuador; to acquire 15 percent of the voting shares of Gulf Bank, Miami, Florida.

2. Fidel Egas, Quito, Ecuador; to acquire 38 percent of the voting shares of Gulf Bank, Miami, Florida.

3. Kenneth Allan Jewell, Lake Worth, Florida, and Janice Lynn Jewell, Lake Worth, Florida; to retain 1.18 percent and acquire an additional 4.6 percent of the voting shares of Gold Coast Bancshares, Hypoluxo, Florida, and thereby indirectly acquire Bank of South Palm Beaches, Lake Worth, Florida.

4. Robert James Whitaker, Atlantis, Florida, and Ellen Ruth Whitaker, Atlantis, Florida; to acquire 4.6 percent of the voting shares of Gold Coast Bancshares, Hypoluxo, Florida, and thereby indirectly acquire Bank of South Palm Beaches, Lake Worth, Florida.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mary Kathryn Drake, League City, Texas; to acquire an additional 14.88 percent of the voting shares of First Highland Corp., Highland, Illinois, for a total of 17.25 percent, and thereby indirectly acquire The First National Bank of Highland, Highland, Illinois.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Charles Refling, Bottineau, North Dakota, to acquire 37.68 percent; Mark Refling, Bozeman, Montana, to acquire 31.16 percent; and Paul Refling, Yuma, Arizona, to acquire 31.16 percent of the voting shares of First Bottineau, Inc., Bottineau, North Dakota, and thereby indirectly acquire First National Bank and Trust Co., Bottineau, North Dakota.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Ventura County National Bancorp ESOP, Oxnard, California; to acquire 2.70 percent of the voting shares of Ventura County National Bancorp, Oxnard, California, and thereby indirectly acquire Ventura County National Bank, Oxnard, California, and Frontier Bank, National Association, La Palma, California.

Board of Governors of the Federal Reserve System, April 15, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-9215 Filed 4-18-91; 8:45 am]

BILLING CODE 6210-01-F

Century Bancorp, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 8, 1991.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Century Bancorp, Inc., Somerville, Massachusetts; to engage *de novo* through its subsidiary, Century Financial Services, Inc., Somerville, Massachusetts, in providing securities brokerage services solely as agent for the account of customers pursuant to § 225.25(b)(15) of the Board's Regulation Y. These activities will be conducted in Eastern Massachusetts.

Board of Governors of the Federal Reserve System, April 15, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-9214 Filed 4-18-91; 8:45 am]

BILLING CODE 6210-01-F

First of America Bank Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 8, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230

South LaSalle Street, Chicago, Illinois 60690:

1. First of America Bank Corporation, Kalamazoo, Michigan; to engage *de novo* through its subsidiary, First of America Community Development Corporation, Kalamazoo, Michigan, in making investments in corporations or projects primarily designed to promote community welfare pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Michigan, Indiana, and Illinois.

Board of Governors of the Federal Reserve System, April 15, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-9216 Filed 4-18-91; 8:45 am]

BILLING CODE 6210-01-F

Four County Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than May 8, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Four County Bancshares, Inc., Allentown, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples State Bank, Jefferson, Georgia.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Decatur Bancshares, Inc., Decatur, Illinois; to acquire at least 75 percent of the voting shares of First National Bank of Mt. Zion, Mt. Zion, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. CNB Bancshares, Inc., Evansville, Indiana; to acquire 100 percent of the voting shares of JSB Bancorp, Jasper, Indiana, and thereby indirectly acquire Jasper State Bank, Jasper, Indiana.

Board of Governors of the Federal Reserve System, April 15, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-9217 Filed 4-18-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88F-0194]

Freudenberg-Nok General Partnership (Formerly Disogrin Industries, Inc.); Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 7B4007) filed by Freudenberg-Nok General Partnership (formerly Disogrin Industries, Inc.) proposing that the food additive regulations be amended to provide for the safe use of a polyurethane resin prepared by the reaction of the following: *epsilon*-caprolactone polyester with polyethylene glycol; adipic acid 1,2-propanediol copolymer; 4,4'-diisocyanato-3,3'-dimethyl-1,1'-biphenyl; 1,4-butanediol; trimethylol propane; and polybutylene glycol copolymer with toluene diisocyanate, all in the presence of triethylenediamine. The polyurethane resin was for use in rubber articles intended for repeated use in contact with food.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 24, 1988 (53 FR 23797), FDA published a notice that it had filed a petition (FAP 7B4007) from Disogrin Industries, Inc., Grenier Industrial Airpark, Manchester, NH 03103, that proposed to amend § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) to provide for the safe use of a polyurethane resin prepared by the reaction of the following: *epsilon*-caprolactone polyester with polyethylene glycol; adipic acid 1,2-propanediol copolymer; 4,4'-diisocyanato-3,3'-dimethyl-1,1'-biphenyl; 1,4-butanediol; trimethylol propane; and polybutylene glycol copolymer with toluene diisocyanate, all in the presence of triethylenediamine. The polyurethane resin was to be used in rubber articles intended for repeated use in contact with food. Freudenberg-Nok General Partnership has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: April 12, 1991.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 91-9209 Filed 4-18-91; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Centers for Disease Control; Statement of Organization, Functions, and Delegations of Authority

Part H, chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 56 FR 7390, February 22, 1991) is amended to reflect the following changes within the Center for Infectious Diseases: (1) Abolishment of the Division of Immunologic, Oncologic, and Hematologic Diseases; and (2) revision of the functional statements for the Scientific Resources Program; the Division of HIV/AIDS; and the Office of the Director, Division of HIV/AIDS.

Section HC-B, Organization and Functions, is hereby amended as follows:

1. Delete in their entirety the headings and functional statements for the Division of HIV/AIDS (HCRK) and the Office of the Director (HCRK1) and substitute the following: Division of HIV/AIDS (HCRK). (1) Conducts national surveillance of infectious

diseases and other illnesses associated with human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS), and sentinel surveillance of HIV infection; (2) conducts national and international surveillance, epidemiologic and laboratory investigations, and studies to determine risk factors and transmission patterns of HIV/AIDS; (3) develops recommendations and guidelines on the prevention and control of HIV/AIDS; (4) evaluates prevention and control activities in collaboration with other CDC components; (5) provides epidemic aid, epidemiologic and surveillance consultation, and financial assistance for HIV/AIDS surveillance activities to state and local health departments; (6) provides consultation to other PHS agencies, medical institutions, and private physicians; (7) provides information to the scientific community through publications and presentations; (8) conducts laboratory investigations and studies of the syndrome and the retrovirus associated with its cause; (9) develops and evaluates laboratory methods and procedures for the isolation, characterization, pathogenesis, immunologic effects, and serodiagnosis of HIV; (10) provides reference laboratory services and assists in standardizing and providing reference reagents; (11) assists in providing training to national and international public health laboratorians; (12) serves as the World Health Organization (WHO) Collaborating Center on HIV/AIDS for epidemiology, surveillance, and laboratory consultation; (13) conducts epidemiologic studies on HIV infection in persons with hemophilia and their families; (14) assists in designing, implementing, and evaluating prevention and counselling programs for persons with HIV and hemophilia and their families; (15) conducts investigations into the diagnosis and prevention of diseases of blood, such as hemophilia and other hematologic diseases and disorders; (16) conducts studies of immune mechanisms that occur in microbial infection, particularly infection with HIV.

Office of the Director (HCRK1). (1) Plans, directs, and coordinates the activities of the Division; (2) develops goals and objectives and provides leadership, policy formulation, and guidance in program planning and development; (3) provides program management and administrative support services for HIV/AIDS activities, both domestic and international; (4) assists in designing, implementing, and evaluating HIV/hemophilia prevention and counselling programs.

2. After the heading for the Scientific Resources Program (HCRL), delete the functional statement and substitute the following: (1) Provides animals, animal blood products, glassware, mammalian tissue cultures, microbiological media, special reagents, and other laboratory materials in support of research and service activities to CID laboratories and other CDC organizations; (2) installs, fabricates, modifies, services, and maintains laboratory equipment used in the research and service activities of CDC; (3) develops and implements applied research program to expand and enhance the use of animal models necessary to support research and diagnostic programs and to improve breeding and husbandry procedures; (4) conducts both basic and applied research in cell biology and in the expansion of tissue culture technology as a research and diagnostic tool for infectious disease activities; (5) provides services for CID investigators in protein and DNA synthesis and sequencing; (6) maintains a bank of serum specimens of epidemiological and special significance to CDC's research and diagnostic activities; (7) obtains and distributes experimental vaccines and drugs, antisera and antitoxins, immune globulins; (8) for reagents prepared at CDC, maintains a computerized inventory; provides dispensing; lyophilization, capping, and labeling; and retrieves from storage and ships to requesters; (9) provides support for liquid nitrogen freezers; (10) maintains international hemoglobinometry reference laboratory; (11) produces, maintains, and distributes national and international hemoglobin reference standard preparations; (12) provides diagnostic tissue pathology services; (13) conducts studies on pathogenic organisms and infected tissues to elucidate mechanisms of acute and chronic infections; (14) develops, improves, evaluates, and applies special histologic techniques for detecting infectious agents or their antigens in tissue specimens; (15) investigates the ultrastructural basis of interactions between infectious agents and host cells; (16) administratively and technically supports the CDC Animal Policy Board and the Atlanta Area Animal Care and Use Committee; (17) provides computer support services for the Program's activities.

3. Delete in their entirety the title and statements for the Division of Immunologic, Oncologic, and Hematologic Diseases (HCRQ) and the Office of the Director (HCRQ1).

Effective Date: April 11, 1991.

William L. Roper,

[FR Doc. 91-9212 Filed 4-18-91; 8:45 am]

BILLING CODE 4160-18-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on Apirl 5, 1991.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package.)

1. Psychiatric Review Technique—0960-0413—The information collected on the form SSA-2506 is used by the Social Security Administration (SSA) to evaluate the severity of mental impairments in adults who have filed a claim for disability benefits. The affected public consists of State Disability Determination Agencies who are responsible for reviewing the claims from beneficiaries/recipients and who report their findings to SSA.

Number of Respondents: 55.

Frequency of Response: 8,375.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 115,156.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: April 15, 1991.

Ron Compston,

Social Security Administration Reports Clearance Officer.

FR Doc. 91-9226 Filed 4-18-91; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-91-1917; FR-2934-N-22]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: April 19, 1991.

ADDRESSES: For further information, contact James Forsberg, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708-4300; TDD number for the hearing- and speech-impaired (202) 708-2565. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88-2503-OG (D.D.C.), HUD publishes a notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: April 12, 1991.

Paul Roitman Bardack,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 91-9126 Filed 4-18-91; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-060-4320-12]

Casper District Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Casper District Grazing Advisory Board.

SUMMARY: The Casper District Grazing Advisory Board will meet at 10 a.m. on May 22, 1991. The meeting will convene at the Casper District Office, 1701 East "E" Street, Casper, Wyoming.

The agenda will include: (1) Election of Chairman and Vice-chairman and a brief orientation for new board members; (2) a progress report on range improvement projects; and, (3) a progress report on the district's allotment management plans. The public comment portion is scheduled for 10:30 a.m., or shortly after. Interested persons may appear and comment or submit written statements for board consideration.

DATES: May 22, 1991.

FOR FURTHER INFORMATION CONTACT: To request summary minutes or time on the agenda, contact: Bruce Daughton, Bureau of Land Management, Casper District Office, 1701 East "E" Street, Casper, Wyoming 82601, (307) 261-7642.

SUPPLEMENTARY INFORMATION: The meeting is held in accordance with section 3, Executive Order 12548 of February 14, 1986. The meeting is open to the public.

Summary minutes of the board meeting will be maintained in the district office and will be available for public inspection within 30 days following the meeting.

Dated: March 14, 1991.

James W. Monroe,

District Manager.

[FR Doc. 91-6930 Filed 4-18-91; 8:45 am]

BILLING CODE 4310-22-M

[NV-050-00-4630-04]

Las Vegas District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Department of the Interior. Notice is hereby given in accordance with Public Law 920463 that a meeting of the Bureau of Land Management, Las Vegas District Advisory Council will be held Saturday, May 11, 1991, at 9 a.m.-3 p.m. in the Las Vegas District Conference Room, 4765 Vegas Drive, Las Vegas, Nevada.

The meeting agenda will include:

1. Sand-and-Gravel Update.
2. Sandy Valley Landfill.
3. Rocky Gap Road.
4. Shooting Closure.
5. Nellis Wild Horse Gather.
6. Elections.
7. Public Comment.

Advisory Council meetings are open to the public. Persons wishing to make oral statements to the Council must notify the District Manager, Bureau of Land Management, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89125, prior to May 3, 1991.

Minutes of the meeting will be available, upon request, at the Las Vegas District Office on May 24, 1991.

Dated: April 4, 1991.

Ben F. Collins,

District Manager, Las Vegas, Nevada.

[FR Doc. 91-9167 Filed 4-18-91; 8:45 am]

BILLING CODE 4310-HC-M

[CA-010-01-4212-14, CACA-28011]

Direct Sale of Public Land, CA

AGENCY: Bureau of Land Management, Interior.

REALTY ACTION: Direct sale of public land, California.

SUMMARY: The following described public land is being considered for direct sale pursuant to section 203 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1713):

Mount Diablo Meridian, California

T. 15N., R. 8E.,
Sec. 1, Lot 42.
Comprising 1.18 acres, more or less.

Publication of this notice in the Federal Register segregates the public lands from operation of the public land laws and the mining laws, except for mineral leasing and section 203 of the Federal Land Policy and Management Act of 1976. The segregative effect will end upon issuance of patent or 270 days from the date of publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, c/o Area Manager, Folsom Resource Area, 63 Natoma Street, Folsom, CA 95630.

SUPPLEMENTARY INFORMATION: The above described lands are being considered for direct sale to L.B. Nelson Corporation. The 1.18-acre parcel is a remnant created from adjoining mineral surveys and lotted (Lot 42) on a Supplemental Plat which was approved on February 15, 1991. A portion of the remnant bisects land owned by L.B. Nelson Corp., known as Pine Ridge Estates, a 102-acre Rattlesnake Road project. Because the public land tract is an integral, but small, part of the project, a direct sale at fair market value has been determined to be appropriate and justified. An additional $50 non-returnable mineral conveyance processing fee is required.

Lands to be transferred from the United States will be subject to the

following reservations, terms, and conditions:

1. The United States reserves to itself a right-of-way for ditches or canals constructed under the authority of the Act of August 30, 1890 (43 U.S.C. 956).

2. All necessary clearances including archaeology, rare plants and animals shall be completed prior to conveyance of title.

FOR FURTHER INFORMATION CONTACT: Kay Miller, Folsom Resource Area Office, (916) 985–4474, or at the address listed above.

Dated: March 26, 1991.

Rick Cooper,

Acting Area Manager.

[FR Doc. 91–9172 Filed 4–18–91; 8:45 am]

BILLING CODE 4310–40–M

[CO–070–00–4212–14]

Colorado: Realty Action; Noncompetitive Sale of Public Lands in Mesa County, CO

The following land has been found suitable for direct sale under sections 203 and 209(b) of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the estimated fair market value of $3,375.00. The land will not be offered for sale until at least 60 days after the date of this notice.

Sixth Principal Meridian

T. 15 S., R. 103 W,
Section 2, Lot 6.
Containing 2.25 acres.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first. This land is being offered by direct sale to Robert Gladwell. It has been deteremined that the subject parcel contains no known mineral values; therefore, mineral interests may be conveyed simultaneously.

The patent, when issued, will contain certain reservations to the United States and will be subject to valid existing rights. Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the Grand Junction District Office, Bureau of Land Management, 764 Horizon Drive, Grand Junction, Colorado 81506.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Grand Junction District, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: April 8, 1991.

Bruce Conrad,

District Manager, Grand Junction District.

[FR Doc. 91–9171 Filed 4–18–91; 8:45 am]

BILLING CODE 4310–SB–M

[AZ–010–91–4332–11]

Cottonwood Point Wilderness Management Plan for Cottonwood Point Wilderness Area; Draft Availability

AGENCY: Bureau of Land Management, Arizona Strip District, Interior.

ACTION: Notice of availability of the Draft Cottonwood Point Wilderness Management Plan for the Cottonwood Point Wilderness Area.

SUMMARY: The Draft wilderness management plan (WMP) for the Cottonwood Point Wilderness Area, Vermillion Resource Area, Arizona Strip District is available for distribution to the public, federal, state and local agencies and Indian tribes. The WMP will guide management of the wilderness resources as well as other uses for the next ten years.

The Draft WMP would provide comprehensive management direction and objectives as well as specific management actions for a total of 6500 acres of statutory wilderness in northern Mojave County, Arizona.

A 45 day public comment period on the Draft WMP will commence with publication in the **Federal Register** of this Notice of Availability.

FOR FURTHER INFORMATION CONTACT: G. William Lamb, District Manager, 390 North 3050 East, St. George, Utah 84770 (Phone 801/673–3545).

SUPPLEMENTARY INFORMATION: The Cottonwood Point Wilderness Area was incorporated into the National Wilderness Preservation system on August 28, 1984, by the Arizona Wilderness Act of 1984 (Public Law 98–406) after almost 6 years of inventory and study. The WMP includes an Environmental Assessment of the proposed plan and a Draft Fire Management Plan for the area.

Dated: April 11, 1991.

G. William Lamb,

Arizona Strip District Manager.

[FR Doc. 91–9170 Filed 4–18–91; 8:45 am]

BILLING CODE 4310–32–M

[ID–030–01–4332–10]

Sand Mountain Wilderness Study Area in Fremont County, ID; Correction of Boundary

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction of boundary of the Sand Mountain Wilderness Study Area in Fremont County, Idaho.

The initial inventory of the Sand Mountain Wilderness Study Area (WSA) was in error in that a portion of a cultivated field was included. The small parcel of public land enclosed by an irrigation canal is essentially unmanageable as wilderness and does not fit with the other lands in the WSA. The Sand Mountain WSA is included in the larger Nine Mile Knoll Area of Critical Environmental Concern (ACEC). The boundary of the Sand Mountain WSA and Nine Mile Knoll ACEC is hereby adjusted to exclude the following described public land containing this agricultural development:

Boise Meridian, Idaho

T. 7 N, R. 39 E.
sec. 5, E½NE¼SE¼SW¼, SE¼SE¼SW¼.
The area described above contains 15 acres, more or less.

This action is in accordance with the Federal Land Policy and Management Act of 1976, section 603 (90 Stat. 2743).

FOR FURTHER INFORMATION: Detailed information concerning this boundary adjustment is available at the Idaho Falls District, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401, or can be obtained by calling Don Watson at (208) 524–7540.

Dated: April 11, 1991.

Lloyd H. Ferguson,

District Manager.

[FR Doc. 91–9169 Filed 4–18–91; 8:45 am]

BILLING CODE 4310–GG–M

National Park Service

Preservation of Jazz Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1988), that the first meeting of the Preservation of Jazz Advisory Commission will be held at 10:00 am until 12 noon on Friday, May 3, 1991 in the Crescent City Room on the 18th floor of the World Trade

Center, Number 2 Canal Street, New Orleans, Louisiana.

The Preservation of Jazz Advisory Commission was established by Public Law 101–499 to advise the Secretary of the Interior in preparing a study of the suitability and feasibility of establishing a unit of the National Park System to interpret and commemorate the origins, development, and progression of jazz in New Orleans. The study is to include a determination as to which sites and structures in New Orleans associated with the origin and early history of jazz exhibit the necessary historical and physical integrity to make them suitable and feasible for managment as a National Park System unit. The Advisory Commission is to hold at least three public hearings.

The matters to be discussed at this meeting include an overview of Public Law 101–499; the draft task directive for the study; jazz related cultural sites in New Orleans; and public involvement in the jazz study.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with Nat Kuykendall, Project Coordinator.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Nat Kuykendall, Project Coordinator, Jazz Study, National Park Service, Denver Service Center, P.O. Box 25287, Lakewood, Colorado 80225–0287, Telephone: (303) 969–2415. Information will also be available from Robert Belous, Superintendent, Jean Lafitte National Historical Park and Preserve, telephone (504) 598–3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of the Project Coordinator.

Dated: April 16, 1991.

Herbert S. Cables Jr.,

Acting Director, National Park Service.

[FR Doc. 91–9455 Filed 4–18–91; 9:10 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 6, 1991. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by May 6, 1991.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

Mariposa County

Mariposa Town Historic District, Roughly bounded by Charles, 11th, Jones and 4th Sts., Mariposa, 91000560

Mendocino County

FROLIC (brig). NE of Pt. Cabrillo, Caspar vicinity, 91000565

Sacramento County

J Street Wreck, At the foot of J St., in the Sacramento R., Sacramento, 91000562

San Francisco County

APOLLO (Storeship), NW corner of Sacramento and Battery Sts., San Francisco, 91000561

NIANTIC (Storeship), NW corner of Clay and Sansome Sts., San Francisco, 91000563

Santa Barbara County

SS YANKEE BLADE, Address Restricted, Lompoc vicinity, 91000564

GEORGIA

Chatham County

Drouillard—Maupas House 2422 Abercorn St., Savannah, 91000558

Coweta County

Willcoxon—Arnold House, One Bullsboro Dr., Newnan, 91000559

ILLINOIS

Champaign County

Unitarian Church of Urbana. 1209 W. Oregon St., Urbana, 91000572

Cook County

Columbus Park (Chicago Park District MPS), 500 S. Central Ave., Chicago, 91000567

Kenwood Evangelical Church, 4600—4608 S. Greenwood Ave., Chicago, 91000570

Washington, Square (Chicago Park District MPS), 901 N. Clark St., Chicago, 91000566

Du Page County

Turner Town Hall, 132 Main St., West Chicago, 91000573

Greene County

Greene County Almshouse, Twp. Rd. TR156A NE of Carrolton, Carrolton vicinity, 91000568

Logan County

Hawes, J.H., Elevator, 2nd. St., Atlanta, 91000571

Sangamon County

Price—Prather House, Jct. of Main and Elkhart Sts., Williamsville, 91000574

[FR Doc. 9198 Filed 4–18–91; 8:45 am]

BILLING CODE 4310–70–M

Office of Surface Mining Reclamation and Enforcement

Availability of Draft Environmental Impact Statement

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of the draft environmental impact statement for the proposed revision to the permanent program regulations implementing section 522(e) of the Surface Mining Control and Reclamation Act of 1977, OSM–EIS–29.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior is making available for public comment, the Draft Environmental Impact Statement (DEIS) for the Proposed Revision to the Permanent Program Regulations Implementing section 522(e) of the Surface Mining Control and Reclamation Act of 1977. The DEIS has been prepared to assist OSM in determining the environmental impacts of the various regulatory options under consideration.

DATES: OSM will accept written comments on the DEIS until 5 p.m. Eastern time on June 18, 1991.

ADDRESSES: Single copies of the DEIS may be obtained by contacting the Branch of Environmental and Economic Analysis, Office of Surface Mining, 1951 Constitution Avenue, NW., room 5415–L, Washington, DC 20240; Telephone (202) 343–1476 or (FTS) 343–1476.

Written comments may be hand delivered to the Office of Surface Mining, Administrative Record, room 5131, 1100 L St., NW., Washington, DC; or mailed to the Office of Surface Mining, Administrative Record, room 5131–L, 1951 Constitution Avenue, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Andrew F. DeVito, Branch of Environmental and Economic Analysis, Office of Surface Mining, 1951 Constitution Avenue, NW., room 5415–L, Washington, DC 20240; Telephone (202) 343–5150 or (FTS) 343–5150.

SUPPLEMENTARY INFORMATION: The Office of Surface Mining Reclamation and Enforcement is making available for public comment, the DEIS for the Proposed Revision to the Permanent Program Regulations Implementing section 522(e) of the Surface Mining Control and Reclamation Act of 1977. The DEIS describes the environmental impacts that would result from amending regulations that address the issue of valid existing rights (VER) and the application of the prohibitions of

section 522(e) of the Surface Mining Control and Reclamation Act to the subsidence effects of underground mining. Section 522(e) prohibits, subject to VER, surface coal mining operations on lands within units of the National Park System; the National Wildlife Refuge System; the National System of Trails; the National Wilderness Preservation System; the Wild and Scenic Rivers System, including study rivers designated under section 5(a) of the Wild and Scenic Rivers Act; and National Recreation Areas designated by act of Congress. In addition, surface mining operations without valid existing rights are prohibited (with certain exceptions) if they will adversely affect places listed on the National Register of Historic Places or any publicly owned park, or are within a National Forest. Such operations also are prohibited within 100 feet of cemeteries and public roads, and within 300 feet of occupied dwellings, public buildings, schools, churches, and public parks.

The combined regulatory options for the VER and 522(e) rulemakings are presented as eleven alternatives. Five alternatives include the modified all permits standard for VER and various interpretations of the applicability of the 522(e) prohibitions to subsidence from underground mining. Five alternatives include the good faith-all permits or takings standard for VER and various interpretations of the applicability of the 522(e) prohibitions to subsidence from undergound mining. One alternative includes the ownership and authority standard for VER; the 522(e) prohibitions would not apply to subsidence.

The analysis considers the general and site-specific effects on the quality of the human environment that might occur as a result of coal mining under the various alternatives. Under each alternative, more or less coal would be available depending on what standard is used for VER and how the subsidence restrictions are applied.

Dated: April 9, 1991.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 91-9190 Filed 4-18-91; 8:45 am]

BILLING CODE 4310-05-M

INTERNATIONAL TRADE COMMISSION

Change in Briefing Schedule for Ongoing Title VII Investigations

AGENCY: United States International Trade Commission.

ACTION: Revised briefing schedule for ongoing Title VII investigations.

EFFECTIVE DATE: April 22, 1991.

FOR FURTHER INFORMATION CONTACT: Lynn Featherstone (202) 252-1161), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 252-1810. Persons with mobility impairments who will need specia' assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 252-1000.

SUPPLEMENTARY INFORMATION: On March 21, 1991, the Commission published final rules concerning the conduct of investigations under Title VII of the Tariff Act of 1930 (56 FR 11918). The new rules become effective April 22, 1991, and apply to all investigations active on that date. The new rules delete the provisions of former rule 207.7(g), which authorized parties to file supplemental written comments on business proprietary information received under an administrative protective order (APO) by no later than five calendar days after the deadline for posthearing briefs in a final investigation, or three calendar days after the deadline for postconference briefs in a preliminary investigation. In lieu of the separate APO submission, the Commission intends to extend the deadlines for posthearing/postconference briefs to better enable the incorporation of data received under APO in those documents. Accordingly, revised due dates for posthearing/postconference briefs in ongoing investigations are presented below; the supplemental APO submissions originally scheduled for these investigations will not be accepted.

Investigation	Original posthearing/postconference brief deadline	Revised posthearing/postconference brief deadline
731-TA-514 (Preliminary), Shop Towels from Bangladesh	April 23, 1991	April 24, 1991.
731-TA-52 (Final), Sheet Piling from Canada	April 23, 1991	April 25, 1991.
731-TA-458 and 459 (Final), Polyethylene Terephthalate Film, Sheet and Strip from Japan and the Republic of Korea.	April 24, 1991	April 26, 1991.
731-TA-464 (Final), Sparklers from the People's Republic of China	May 6, 1991	May 8, 1991.
731-TA-469 (Final), High-Information Content Flat Panel Displays and Subassemblies Thereof from Japan	July 17, 1991	July 19, 1991.
731-TA-472 (Final), Silicon Metal from the People's Republic of China	May 1, 1991	May 3, 1991.
731-TA-470 and 471 (Final), Silicon Metal from Argentina and Brazil	June 12, 1991	June 14, 1991.

As specified in rule 207.3(c), if posthearing/postconference briefs contain business proprietary information, a nonbusiness proprietary version must be filed no later than one business day later.

Issued: April 12, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-9333 Filed 4-18-91; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Intent to Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

A. 1. Parent corporation and address of principal office: Alamo Group (USA) Inc., P.O. Drawer 549, Seguin, Texas 78156-0549.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

i. Alamo Group Trucking, Inc., Delaware.

ii. Alamo Group (TX) Inc., Texas.

iii. Alamo Group (IL) Inc., Illinois.

iv. Alamo Group (NJ) Inc., New Jersey.

v. Alamo Group (KS) Inc., Kansas.

vi. Alamo Sales Corp., Delaware.

vii. Alamo Sales (USA) Inc., Delaware.

viii. Alamo Group (OK) Inc., Oklahoma.

B. 1. Parent corporation and address of principal office: Lone Star Steel Company, 2200 West Mockingbird Lane, P.O. Box 35888, Dallas, Texas 75235.

2. Wholly owned subsidiaries which will participate in the operations, and States of incorporation:

a. Texas & Northern Railway Company (a Texas corporation).

b. T & N Lone Star Warehouse Company (a Texas corporation).

c. Lone Star Logistics, Inc. (a Texas corporation).

C. Parent corporation and address of principal office: Philip Morris Companies Inc. (a Virginia corporation), 120 Park Avenue, New York, NY 10017.

Primary contact relative to CIH services: Private Truck Operations, Kraft General Foods, Inc., Kraft USA, One Kraft Court, Dept. 667, Glenview, IL 60025.

Wholly owned subsidiaries which will participate in the operations, and states of incorporation:

(1) Abdulla of Bond Street, Ltd, Delaware
(2) Anderson Clayton/Humko Products, Inc., Delaware
(3) B. Muratti Sons & Company Inc., Delaware
(4) Battery Properties Inc., Delaware
(5) Bennett, Farr & Wells Bottling Co., Michigan
(6) Boboli Co., Delaware
(7) BOR Services Inc., Delaware
(8) Bouyea-Fassetts, Inc., Delaware
(9) Brisk Brokerage, Inc., Delaware
(10) Brisk Transportation Inc., Delaware
(11) Carolina Properties of Greenville Inc., South Carolina
(12) Carroll Shelby's Original Texas Chili Company, Texas
(13) Charles Freihofer Baking Co., Inc., New York
(14) Chiffon Corp., Delaware
(15) Churny Company, Inc., Delaware
(16) Colonial Heights Packaging, Inc., Delaware
(17) Comercial Saimaza Sociedad, Delaware
(18) Dart Resorts Inc., Delaware
(19) Di Giorno Foods Co., Delaware
(20) Eastern Projects, Inc., California
(21) Entenmann's, Inc., Delaware
(22) 5733, Inc., Louisiana
(23) Filter Materials Ltd., Delaware
(24) FINI U.S.A. Corp., New Jersey
(25) Frusen Gladje, Ltd., Delaware
(26) Gardners Good Foods, Inc., New Jersey
(27) General Foods Bakery Companies, Inc., Delaware
(28) General Foods Borinquen Inc., Delaware
(29) General Foods Capital Corporation Delaware
(30) General Foods Caribbean Manufacturing Corp., Delaware
(31) General Foods Credit Corporation, Delaware
(32) General Foods Credit Investors No. 1 Corporation, Delaware
(33) General Foods Credit Investors No. 2 Corporation, Delaware
(34) General Foods Credit Investors No. 3 Corporation, Delaware
(35) General Foods Foodservice Bakery Corporation, Delaware
(36) General Foods Manufacturing Corporation of Mexico, Delaware
(37) General Foods Trading Company, Delaware
(38) Grant Holdings, Inc., Pennsylvania
(39) HAG GF Vertriebs & Marketing Corporation, Delaware
(40) HNB Investment Corp., Delaware
(41) Highland Mutual Water Company, Colorado
(42) Highlands Ranch Decorator Center, Inc., Colorado
(43) Highlands Ranch Development Corp., Colorado
(44) Highlands Ranch Escrow Company, Inc., Colorado
(45) Highlands Ranch Estates, Inc., Colorado
(46) Highlands Ranch Financial Corporation, Colorado
(47) Highlands Ranch Mortgage Company, Inc., Colorado
(48) Highlands Real Estate Corporation, Colorado
(49) Highlands Ranch Village, Inc., Colorado
(50) Hudson Commercial Corporation, Delaware
(51) International Tobacco Co., Inc., New York, Delaware
(52) International Tobacco Marketing S.A., Delaware
(53) Jacob Leinenkugel Brewing Co., Inc., Wisconsin
(54) Jacobs Suchard Internaitonal, Delaware
(55) Kent Corporation, Delaware
(56) Kraft Food Ingredients Corp., Delaware
(57) Kraft Foodservice, Inc., Delaware
(58) Kraft Foodservice Holding Corporation, Delaware
(59) Kraft General Foods, Inc., Delaware
(60) KGF Commissary Services Corp., Delaware
(61) Kraft General Foods R & D, Inc., Delaware
(62) Kraft International, Inc., Delaware
(63) MVC Financial Corporation, California
(64) Manextab Inc., Delaware
(65) Metropolitan Cheese Distributing Corporation, New York
(66) Miller Brands of Oklahoma, Inc., Oklahoma
(67) Miller Brands of Omaha, Inc., Nebraska
(68) Miller Brands, Inc. (Oregon), Oregon
(69) Miller Brewing International, Inc., Delaware
(70) Miller Brewing Company, Wisconsin
(71) Miller Brewing Overseas, Inc., Delaware
(72) Miller Distributing of Oklahoma, Inc., Oklahoma
(73) Miller High Life Foundation, Inc., California
(74) Mission Viejo Company, California
(75) Mission Viejo Realty Group Inc., California
(76) N B P Marketing, Inc., Delaware
(77) National Dairy Products Corp., Delaware
(78) New Town of Highlands Ranch, Inc., Delaware
(79) North Street Capital Corporation, Delaware
(80) One Channel Corporation, Delaware
(81) Oscar Mayer Foods Corporation, Delaware
(82) PMCC Investors No. 1 Corporation, Delaware
(83) PMCC Investors No. 2 Corporation, California
(84) PMCC Investors No. 3 Corporation, Delaware
(85) PMCC Investors No. 4 Corporation, Delaware
(86) PMCC Leasing Corporation, Delaware
(87) Packaged Food & Beverage Co., Inc., Delaware
(88) Pan American Industries, Inc., New York
(89) Park Avenue Export Corporation, Delaware
(90) Park Export Corporation, U.S. Virgin Is.
(91) Phenix Leasing Corporation, Delaware
(92) Phenix Management Corporation, Delaware
(93) Philip Morris (1974) Limited, Delaware
(94) Philip Morris Asia (Services) Incorporated, Delaware
(95) Philip Morris Asia Incorporated, Delaware
(96) Philip Morris Capital Corporation, Delaware
(97) Philip Morris Corporate Services Inc., Delaware
(98) Philip Morris Duty Free Inc., Delaware
(99) Philip Morris Europe S.A., Delaware
(100) Philip Morris Export Corporation, Delaware
(101) Philip Morris Incorporated (Philip Morris USA), Virginia
(102) Philip Morris Management Corp., New York
(103) Philip Morris Marketing S.A., Delaware

(104) Philip Morris International Inc., Delaware
(105) Philip Morris International Finance Corp., Delaware
(106) Philip Morris Latin America Sales Corp., Delaware
(107) Philip Morris Limited, Delaware
(108) Philip Morris Products Inc., Virginia
(109) Philip Morris Overseas Limited, Delaware
(110) Philip Morris Sales Inc., Delaware
(111) Philip Morris Services Inc., Delaware
(112) Philip Morris Taiwan Inc., Delaware
(113) Professional Marketing Overseas Corp., Delaware
(114) Rexall Realty Corporation, Delaware
(115) Ridg's Finer Foods, Inc., Delaware
(116) Rye Ventures, Inc., New York
(117) SB Leasing Inc., Delaware
(118) Sand Creek Cattle Company, Colorado
(119) Santa Ana Beverage, Inc., California
(120) Seven Seas Foods, Inc., Delaware
(121) Shop-N Ride, Inc., Colorado
(122) Simsbury Properties Inc., Delaware
(123) Southern Gold Citrus Products Inc., Florida
(124) Subsidiary Corp., Delaware
(125) Taylor Group, Inc., Missouri
(126) The All American Gourment Company, Delaware
(127) Tombstone Pizza Corp., Delaware
(128) Velv Advertising, Incorporated, Connecticut
(129) Vict. Th. Engwall & Co., Inc., Delaware

D. 1. Parent corporation and address of principal office: Pressure Vessel Service, Inc., d/b/a PVS Chemicals, Inc., 11001 Harper Avenue, Detroit, Michigan 48213.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) Chemical Transport Services, Inc.—Michigan.

(ii) Dynecol, Inc.—Michigan.

(iii) Fanchem Ltd.—Canada.

(iv) PVS Chemicals, Inc. (Illinois)—Michigan.

(v) PVS Chemicals, Inc. (Michigan)—Michigan.

(vi) PVS Chemicals, Inc. (New York)—Michigan.

(vii) PVS Chemicals, Inc. (Ohio)—Michigan.

(viii) PVS Chemicals, Inc. (Texas)—Michigan.

(ix) PVS-Nolwood Chemicals, Inc.—Michigan.

(x) PVS Quimicos de Puerto Rico, Inc.—Michigan.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-9252 Filed 4-18-91; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 111X)]

Norfolk and Western Railway Co. and Peoria & Pekin Union Railway Co.—Abandonment and Discontinuance of Trackage Rights Exemption—in Tazewell County, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–1094 the abandonment by Norfolk and Western Railway Company (N&W) of, and the discontinuance of trackage rights by Peoria & Pekin Union Railway Company over, N&W's 1.04-mile line of railroad between mileposts 170.69 and 171.73, in East Peoria, Tazewell County, IL, subject to standard labor protective conditions.

DATES: Provided no formal expressions of intent to file an offer of financial assistance has been received, this exemption will be effective on May 1, 1991. Formal expressions of intent to file an offer[1] of financial assistance under 49 CFR 1152.27(c)(2) must be filed by April 29, 1991. Petitions for reconsideration must be filed by and requests for a public use condition must be filed by April 24, 1991.

ADDRESSES: Send pleadings referring to Docket No. AB–290 (Sub–No. 111X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and

(2) Petitioners' representative: Robert J. Cooney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510–2191.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired. (202) 275–1721)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275–1721.)

Decided: April 8, 1991.

By the Commission, Chairman Philbin, Vice Chairman Emmet, Commissioners Simmons, Phillips, and McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-9251 Filed 4-18-91; 8:45 am]

BILLING CODE 7035-01-M

[1] *See* Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 90–25]

Bluestone Drug Store; Revocation of Registration

On March 23, 1990, the Administrator of the Drug Enforcement Administration (DEA) issued to Gerald M. Bluestone, R.Ph. (Respondent), d/b/a Bluestone Drug Store, 2628 E. Carson Street, Pittsburgh, Pennsylvania 15203, an Order to Show Cause proposing to revoke its DEA Certificate of Registration, AB1112135, and to deny any pending applications for renewal of such registration. The Order to Show Cause alleged that the Respondent's continued registration would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4). Additionally, citing his preliminary finding that Respondent's continued registration posed an imminent danger to the public health and safety, the Administrator ordered the immediate suspension of DEA Certificate of Registration, AB1112135, during the pendency of these proceedings. 21 U.S.C. 824(d).

Respondent, through counsel, requested a hearing and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Pittsburgh, Pennsylvania on August 9, 1990. On December 5, 1990, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. On January 25, 1991, Judge Bittner transmitted the record of these proceedings to the Administrator. The Administrator has considered this record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that DEA and State Investigators conducted an investigation of the Respondent's pharmacy on August 25,

1980. The investigation revealed that: (1) The pharmacy did not possess a current Pennsylvania State Board of Pharmacy permit number; (2) the owner of the pharmacy did not possess a valid Pennsylvania State Pharmacist License number; (3) Respondent failed to keep readily retrievable records of controlled substances dispensed at the pharmacy; and (4) Respondent had maintained overages and shortages of eight controlled substances audited in the course of the investigation. Consequently, a complaint was filed against Respondent for violations of the Pennsylvania Pharmacy Act. Respondent pled guilty, paid a fine of $350.00, and agreed to update all of his licenses.

On December 2, 1987, the Pennsylvania Board of Pharmacy conducted a routine inspection of Respondent's pharmacy. It was observed that many of the prescriptions filled by Respondent for Percocet and Percodan, both Schedule II narcotics, were written by the same physician. The State Investigator conducting said inspection also observed a number of abnormal pharmacy practices and violations of State law. For example, hardly any non-controlled substances were dispensed; there were no pharmacist's initials on the prescriptions; and many of the drugs had outdated expiration dates on the labels.

Another follow-up State inspection occurred on May 26, 1988. This inspection revealed that Respondent had not properly maintained his prescription files or properly documented prescription refills; Respondent had continued to dispense disproportionately high numbers of controlled substances; and, eleven full bottles of Tussionex (a Schedule III controlled substance) and one open bottle of Tussionex were observed during the inspection standing unsecured on top of Respondent's prescription counter.

On January 24, 1989, a third inspection of the pharmacy revealed that nearly all of the most recent prescriptions were for controlled substances, and nearly all of the 75 most recent Schedule II controlled substance prescriptions filled by Respondent were written by the same physician.

The administrative law judge also found that Respondent had been the subject of three excessive purchase reports between January 1989 and January 1990. Specifically, one excessive purchase report showed that Respondent had purchased 6,500 dosage units of Percocet and 300 dosage units of Percodan between September 12, 1988 and December 29, 1988; a second report showed that during October 1989, the Respondent purchased 100 Anexsia tablets (a Schedule III controlled substance), 2,300 Anexsia 7.5 mg. tablets, 1,900 Didrex 50 mg. tablets (also a Schedule III controlled substance), and eleven 900 ml. bottles of Tussionex cough syrup; and a third report showed that during December 1989, Respondent purchased 3,800 Anexsia 7.5 mg. tablets, and 2,900 Didrex 50 mg. tablets.

In early 1990, the DEA received information from confidential informants that Respondent had filled numerous prescriptions for Schedule II controlled substances and was providing Percocet to several members of the same family, all for no legitimate medical purpose. The informants stated that Respondent filled numerous controlled substance prescriptions for them, all under names other than their own. Respondent always filled these prescriptions, which were for controlled substances such as Anexsia, Valium, Tussionex, and Hycodan, without questioning them at all. One of the confidential informants stated that Respondent knew her real identity each time she obtained controlled substances from him under a fictitious name.

On March 22, 1990, a DEA Task Force Agent, accompanied by a DEA Diversion Investigator, executed a Federal search warrant at the Respondent pharmacy. Before executing the warrant, they knocked on the door of the pharmacy and waited outside the door with their credentials, preparing to identify themselves. Respondent seated in a chair just inside the locked front door, told them to "put the money in the slot." The Task Force Agent put a twenty dollar bill through the slot and asked for twenty syringes. When Respondent put the syringes through the slot, the DEA Task Force Agent and Investigator identified themselves and were admitted by Respondent. Respondent sold said syringes without a prescription, as he often did, in violation of State law. Respondent failed to acknowledge any wrongdoing.

During the execution of the search warrant, five full, and one partially full, bottles of Tussionex cough syrup were observed on top of Respondent's pharmacy counter, an unusually large amount of Tussionex for a small pharmacy to have. Many of the controlled substances had outdated expiration dates on the labels. Invoices and other required records were not readily retrievable.

A review of Respondent's documents disclosed that many patients received refills immediately after the original prescription was filled, and returned to Respondent with new prescriptions only a few days later. Further, Respondent filled excessive numbers of prescriptions for Schedule II controlled substances for the same individuals. Six hundred and forty-eight prescriptions were purportedly written by a Dr. Weinberg during a three-month period. All were written on one particular hospital blank which had been photocopied. The medications listed on the prescriptions were all highly abused drugs. Moreover, many prescriptions were for combinations of these highly addictive controlled substances, such as Tylenol with codeine and Doriden, and Tussionex and Doriden, for which there was no legitimate medical purpose. On the street these combinations are known as "fours and doors" and "pancakes and syrup," respectively.

During an interview with the DEA, Dr. Weinberg reviewed the prescriptions and was astounded at their number. Dr. Weinberg told the investigators that he did not write any of the prescriptions. Since Dr. Weinberg is a pulomonary specialist, he rarely writes prescriptions for controlled substances.

Respondent also filled over 600 prescriptions ostensibly written by a Dr. Footerman during a period of approximately six or seven months. It was obvious that the forms on which the prescriptions were written were photocopies of an original prescription. Often three or four different controlled substances were listed on one prescription form. Formal handwriting analysis established that almost all of these prescriptions were forged.

Between mid-1976 and early 1990, Respondent filled nearly 400 prescriptions for Percocent, Tussionex and Valium, for five members of the Lucas family, known to law enforcement personnel as drug abusers. The ailments listed on the prescription forms never varied throughout the years, and the prescriptions were frequently presented only days apart. In one instance, a member of the Lucas family brought in two prescriptions from two different doctors on the same day. Dr. Zehel appeared as the prescribing physician on the vast majority of these prescriptions. Dr. Zehel was interviewed by the Investigators, and advised them that he had no patients by the name of Lucas, and that he had never prescribed any controlled substances to anyone of that name.

Further, the administration law judge found that Respondent filled prescriptions for methaqualone in 1988. Methaqualone has been in Schedule I since August 27, 1984, and was thus not

a prescribable drug at the time Respondent filled the prescriptions.

Many of the prescriptions for controlled substances presented to and filled by Respondent were written in names such as "Karl Marx," "Stephen Stills," "Jerry Garcia," "Jane Pauly," "Christine McVie," and "Kristy McNichol." It does not appear that Respondent ever questioned the customers who presented these prescriptions as to whether they were in fact the named patients.

Respondent asserts that he never knowingly filled an illegitimate prescription. In support of this assertion, Respondent called as a witness Raymond Kaminski, a customer of the Respondent pharmacy, who testified that he has never been in the store when customers have presented prescriptions to Respondent, but that he had seen Respondent identify and tear up a prescription which he said was fraudulent. Mr. Kaminski further testified that he had once asked Respondent to sell him some cough syrup and that Respondent told him that he could not sell it to him because it was a controlled narcotic.

Respondent also testified that if he knew the signature of the issuing physician on the prescription, then he "would not bother calling each time." Indeed, Respondent admitted to almost never questioning a prescription, no matter how dubious it may have seemed, stating, "if the doctor wrote it, it's got to be good, and I'll fill it." Respondent also asserted that he filled prescriptions for controlled substances presented by one person in different names, and he did so as much as ten times in two weeks, because he always felt that the people presenting the prescriptions were "just doing favors for their friends and the elderly people in the neighborhood and they're bringing in their prescriptions for them."

After considering all of the evidence, the administrative law judge concluded that the Respondent had failed to carry out his responsibilities as a registrant in the past and that there was no credible evidence that he will be more responsible in the future. Judge Bittner thus concluded that Respondent's continued registration is not in the public interest and recommended that the registration be revoked.

In evaluating whether Respondent's continued registration by the Drug Enforcement Administration would be inconsistent with the public interest, the Administrator considers the factors enumerated in 21 U.S.C. 823(f). They are as follows: (1) The recommendation of the appropriate State licensing board or professional disciplinary authority; (2) the applicant's (or registrant's) experience in dispensing, or conducting research with respect to controlled substances; (3) the applicant's (or registrant's) conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances; (4) compliance with applicable State, Federal, or local laws relating to controlled substances; and (5) such other conduct which may threaten the public health and safety. In determining whether a registrant's continued registration is inconsistent with the public interest, the Administrator is not required to make findings with respect to each of the factors listed above. Instead, the Administrator has the discretion to give each factor the weight he deems appropriate, depending upon the facts and circumstances of each case. See, Henry J. Schwarz, Jr., M.D., Docket No. 88–42, 54 FR 16422 (1989); Neveille H. Williams, D.D.S., Docket No. 87–47, 53 FR 23465 (1988); David E. Trawick, D.D.S., Docket No. 86–69, 53 FR 5326 (1988).

The record establishes that Respondent indiscriminately filled, and refilled, hundreds of prescriptions under suspicious circumstances and for excessive quantities. Respondent's customers frequently obtained combinations of controlled substances which were heavily abused and which had no legitimate medical purpose. The customers presenting the prescriptions often obtained controlled substances in a variety of other people's names. Furthermore, all the doctors interviewed by the Investigators denied having written the prescriptions bearing their names as issuing physicians. Respondent also sold syringes to individuals without a prescription in violation of State law. It appears that the primary, if not the only, business of this pharmacy was the supply of syringes and controlled substances to individuals who had no legitimate reason to have them.

Respondent asserted that he did not know that the prescriptions he filled were illegitimate, and that he did not know that it was a violation of the law to sell syringes without a prescription. Judge Bittner found no merit to Respondent's contention, for the record establishes that many of the prescriptions filled by Respondent were so obviously fraudulent. In addition, Respondent failed to contact physicians to verify controlled substances prescriptions, routinely filled prescriptions for dangerous and highly abused combinations of controlled substances, and filled prescriptions for methaqualone years after it had become illegal to do so.

In the instant case the evidence is clear that Respondent disregarded obvious signs that the hundreds of prescriptions he filled were illegitimate. Respondent's dispensing practices directly contravene applicable State and Federal laws, and there can be no question that those practices threaten the public health and safety. Further, under 21 CFR 1306.04, a corresponding responsibility regarding the proper prescribing and dispensing of controlled substances rests with the pharmacist. A pharmacist who knowingly fills an order "purporting to be a prescription issued not in the usual course of professional treatment * * * is not a prescription within the meaning of section 309 of the Act (21 U.S.C. 829) and the person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provide for violations of the provisions of law relating to controlled substances." 21 CFR 1306.04. Mr. Bluestone's dispensing practices clearly violate his corresponding responsibility requirements.

The Administrator adopts the recommended ruling, findings of fact, conclusions of law and decision of the administrative law judge in its entirety. The Administrator concludes that the pharmacy's continued registration is inconsistent with the public interest and that its DEA Certificate of Registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AB1112135, previously issued to Gerald M. Bluestone, R.Ph., d/b/a Bluestone Drug Store, be, and it hereby is, revoked, and any pending applications for renewal of such registration be, and they hereby are, denied. This order is effective April 19, 1991.

When the Order to Show Cause/ Immediate Suspension was served on the pharmacy, all controlled substances possessed by it under the authority of its suspended registration were placed under seal and removed for safekeeping. 21 U.S.C. 824(f) provides that no disposition may be made of such controlled substances under seal until all appeals have been concluded or until time for taking an appeal has elapsed. Accordingly, these controlled substances shall remain under seal until May 20, 1991, or until any appeal of this order has been concluded. At that time, all such controlled substances shall be

forfeited to the United States and shall be disposed of pursuant to 21 U.S.C. 881(e).

Dated: April 12, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91-9180 Filed 4-18-91; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-45]

Val's Pharmacy; Revocation of Registration

On May 30, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Val Gene Tatum, d/b/a Val's Pharmacy (Respondent) of 5508 Duarte Street, Los Angeles, California 90058, proposing to revoke the pharmacy's DEA Certificate of Registration, AT0287816, and to deny any pending applications for renewal of such registration on the ground that the pharmacy's continued registration is inconsistent with the public interest, as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

By letter dated June 21, 1989, Respondent requested a hearing on the issues raised by the Order to Show Cause. The matter was placed on the docket of Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in San Diego, California on February 21, 1990.

On November 16, 1990, the administrative law judge issued her opinion and recommended ruling, findings of fact, conclusions of law and decision. No exceptions were filed and on December 21, 1990, the administrative law judge transmitted the record to the Administrator. The Administrator has considered the record in its entirety and, pursuant to 21 CFR 1316.67, hereby issues his final order in this matter based upon findings of fact and conclusions of law as hereinafter set forth.

The administrative law judge found that Val Gene Tatum, R.-Ph., is the owner and pharmacist-in-charge of Val's Pharmacy. In 1983 and 1984, the pharmacy was cited by the California Board of Pharmacy for filling a large number of prescriptions for highly abused drugs and for failing to abide by state requirements for triplicate prescriptions. Consequently, Respondent appeared before a committee of the Pharmacy Board on September 13, 1984, and was admonished to cease filling prescriptions not for a legitimate medical use.

Val's Pharmacy was inspected again by Pharmacy Board inspectors on March 15, 1988. The inspection was prompted by reports from wholesalers that Respondent had made excessive purchases of controlled substances, and by a request from the California Bureau of Narcotic Enforcement that Pharmacy Board inspectors be present at the execution of a search and arrest warrant for a physician whose office was located in the same building as the pharmacy. The inspectors conducted an audit of controlled substances at the pharmacy. The audit results for a nine month period showed excessive unexplained shortages of controlled substances. Among these were a shortage of 9,859 tablets of aspirin with codeine 60 mg., which represented 64 percent of the amount of this drug for which the pharmacy was accountable; a shortage of 9,454 tablets of diazepam 10 mg., which represented 80 percent of the amount of this drug for which the pharmacy was accountable; a shortage of 5,641 tablets of APAP with codeine 60 mg., which represented 68 percent of the total accountable; and a shortage of 347 tablets of Preludin 75 mg. which represented 72 percent of the total accountable. The audit also revealed that the pharmacy dispensed controlled substances pursuant to prescriptions not written upon the official triplicate prescription forms as required by California law.

The administrative law judge found that Respondent proffered no credible evidence to refute the audit results. Respondent asserts that the audit was improperly conducted and that, in fact, the pharmacy had no significant shortages of controlled substances. In support of this assertion, Respondent contends that the inspectors:

(1) Failed to consider a break-in on November 25, 1986, in which controlled substances were stolen;

(2) Counted some invoices twice;

(3) Failed to consider some prescriptions;

(4) Failed to consider some refills;

(5) Did not consider bottles of controlled substances which were later found hidden in a fuse box, or allow for estimation errors or breakages within bottles; and

(6) Led Respondent's employee to believe that the only records they sought were those pertaining to Dr. Adkins, the physician who was the subject of the March 15, 1988, arrest and search warrant.

Respondent contends that a break-in occurred at Val's Pharmacy on November 25, 1986, that controlled substances were taken, and that the shortage of controlled drugs can be explained by this burglary. However, Respondent did not explain the fact that the audit period commenced after the theft, and losses from the theft would be accounted for in the January and June 1987 inventories.

Respondent further asserts that an invoice for Tylenol No. 4, Valium 10 mg., and Empirin No. 4 were counted twice, resulting in Respondent's being held accountable for 2,000 Valium, 1,000 Tylenol No. 4 and 1,000 Empirin No. 4, which he did not in fact purchase. However, the inspector explained that the two invoices referenced by Respondent are not duplicates, although they bear the same number, and that with respect to the Tylenol he counted only one invoice, using that most favorable to the Respondent. Assuming, *arguendo*, that those figures were counted twice, the audit would still show a shortage of 8,859 dosage units of aspirin with codeine, and 7,454 dosage units of diazepam. Further, for the reasons stated in the administrative law judge's opinion, the Administrator finds Respondent's other assertions to be without merit. The administrative law judge concluded that Respondent's huge shortages of controlled substances, excessive purchases, and filling of prescriptions which did not meet state requirements all demonstrate that he has not complied with his duties as a DEA registrant and therefore, Respondent's continued registration is inconsistent with the public interest. The administrative law judge recommended that Respondent's DEA registration be revoked. The Administrator adopts the opinion and recommended ruling of the administrative law judge.

In determining whether a registration would be inconsistent with the public interest, the Administrator must consider the following factors:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety. 21 U.S.C. 823(f).

The Administrator may rely on any one or a combination of those enumerated factors. He may give such factors the weight he deems appropriate in determining whether a registration

should be revoked or an application denied. See, David E. Trawick, D.D.S., Docket No. 86–69, 53 Fed. Reg. 5326 (1988); *England Pharmacy*, 52 FR 1674 (1987); Paul Stepak, M.D., 51 FR 17556 (1986); and Anne L. Hendricks, M.D., Docket No. 86–4, 51 FR 41030 (1986).

In this case, the record clearly establishes that the March 1988 audit disclosed extremely large shortages of several controlled substances. These shortages were excessive, whether considered in terms of the absolute number of dosage units for which Responent was accountable or in terms of percentages. Respondent has proffered a number of explanations for these shortages, but none of these explanations are persuasive.

Respondent's huge shortages of controlled substances, excessive purchases, and filling of prescriptions which did not meet state requirements all demonstrate that he has not complied with his duties as a DEA registrant in the past, and the record is devoid of indication that he would act more responsibly in the future. Therefore, Respondent's continued registration is not in the public interest.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AT0287816, previously issued to Val Gene Tatum d/b/a Val's Pharmacy, be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective May 20, 1991.

Dated: April 12, 1991.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 91–9179 Filed 4–18–91; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of recordkeeping/reporting requirements under review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extension, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

Extension

Employment and Training Administration

In-Season Farm Labor Report
1205–0006; ETA 223
Monthly
Individuals or households; State or local governments; Farms 8,047 respondents; 16,094 total hours; 24 minutes per response; 1 form

In planning and budgeting for agricultural worker placement programs and programs to provide health and related services to migrant and seasonal farmworkers, it is important to know where seasonal farm jobs are located, level of labor needs, active work periods, tasks to be performed and home bases of workers.

Signed at Washington, DC this 16th day of April, 1991.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 91–9302 Filed 4–18–91; 8:45 am]

BILLING CODE 4510–30–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 29, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 29, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 8th day of April, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition number	Articles produced
Alcoa Fujikura Ltd. (Wkrs)	Ripley, MS	04/08/91	03/22/91	25,637	Wiring Harnesses.
Boise Cascade Paper Group (UCWP)	Rumford, ME	04/08/91	03/25/91	25,638	Paper.
Boris Kroll Fabrics, Inc. (ACTWU)	Paterson, NJ	04/08/91	03/25/91	25,639	Upholstery fabrics.
CAC Microcircuits, Inc. (Wkrs)	Mt. Carmel, IL	04/08/91	03/22/91	25,640	Thick film hybrid microelectronics.
Code-A-Phone Corp. (Wkrs)	Clackamas, OR	04/08/91	03/26/91	25,641	Telephones.
Custom Electronics Inc. (Wkrs)	Oneonta, NY	04/08/91	03/12/91	25,642	Components.
Customized Transportation Inc. (Wkrs)	Kansas City, KS	04/08/91	03/15/91	25,643	Auto Interior.
Digital Equipment Printers Corp. (Wkrs)	Phoenix, AZ	04/08/91	03/29/91	25,644	Computers & Boards.
F.L. Smithe Machine Co., Inc. (IAMAW)	Duncansville, PA	04/08/91	03/25/91	25,645	Envelope Machines.
Farah Manufacturing (ACTW)	El Paso, TX	04/08/91	03/25/91	25,646	Ladies Wear.
Florsheim Shoe Co. (Wkrs)	Cape Girardeau, MO.	04/08/91	03/27/91	25,647	Make Shoes.
GCA Tropel (Wkrs)	Fairport, NY	04/08/91	03/25/91	25,648	Cameras reduction lenses.
Hamilton Beach/Proctor Silex, Inc. (Wkrs)	Southern Pines, NC.	04/08/91	03/22/91	25,649	Electric Irons, Coffeemakers & Poppers.
Hatch Assoc's Consultants, Inc. (Wkrs)	Buffalo, NY	04/08/91	03/25/91	25,650	Design Engineering.
Litchfield Precision Components (Wkrs)	Litchfield, MN	04/08/91	03/15/91	25,651	Fabricated Metal.
Pioneer Industrial Products (Wkrs)	Attica, OH	04/08/91	03/08/91	25,652	Gloves.
PrairieTeck Corp. (Wkrs)	Longmont, CO	04/08/91	03/25/91	25,653	Hard Disk Drives.
Speed Sew (Wkrs)	Patton, PA	04/08/91	03/27/91	25,654	Garments.
Trenton Terminals, Circuit Inc. (Wkrs)	Utica, NY	04/08/91	03/07/91	25,655	Computers & Boards.
Tuff-Bilt Tractors, LTD (Wkrs)	Cumming, GA	04/08/91	03/29/91	25,656	Tractors.
Universal Furniture Assembling (UAW)	Edison, NJ	04/08/91	03/25/91	25,657	Furniture.
Zenith Electronics Corp. (Wkrs)	Glenview, IL	04/08/91	03/28/91	25,658	Components & TV's.

[FR Doc. 91-9306 Filed 4-18-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,031 et al.]

Gary Co., Inc. Gallatin, Tenn et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 29, 1991 applicable to all workers of Gary Company, Gallatin, Tennessee; Scott Company, Anderson, South Carolina; Bold Enterprises, Spartanburg, South Carolina and Raycord, Inc., Spartanburg, South Carolina. The notice was published in the **Federal Register** on February 21, 1991 (56 FR 7067). The certification was amended on March 21, 1991 with a new impact date of December 1, 1989 and published in the **Federal Register** on April 2, 1991 (56 FR 13499).

The Department inadvertently retained the Raycord, Inc., Spartanburg, South Carolina worker group TA-W-25,239A on its amended certification. However, the Raycord worker group is already under a certification TA-W-24,835 which does not expire until November 20, 1992. Accordingly, the Department is deleting Raycord, Inc., Spartanburg, South Carolina from this amended certification.

The amended notice applicable to the subject firms is hereby issued as follows:

All workers of the subject firms listed below who became totally or partially separated from employment on or after December 1, 1989 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Gary Co., Inc.—Gallatin, TN.....TA-W-25,031
Scott Co., Inc.,—Anderson, SC...TA-W-25,228
Bold Enterprises, Inc., Spartanburg, SC.....TA-W-25,239

Signed at Washington, DC, this 10th day of April 1991.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 91-9301 Filed 4-18-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,168]

Jonathan Michael, New York, NY; Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the affirmative determination on petition TA-W-25,168 for workers of the subject firm which was erroneously published in the **Federal Register** on March 7, 1991, (56 FR 9739-40) in FR Document 91-5389. Accordingly, the subject certification for Jonathan Michael, New York, New York is hereby revoked.

The affirmative determination for petition TA-W-25,168 should read: "Kirkland Hall, New York, New York. A certification was issued covering all workers separated on or after November 27, 1989.

Signed in Washington, DC, this 15th day of April 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-9304 Filed 4-18-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,168]

Jonathan Michael, New York, NY; Investigations Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance; Correction

This notice corrects the Name of the workers' firm which was incorrectly published in the **Federal Register** on December 24, 1990, (55 FR 52894) in FR Document 90-29981. The subject document indicated Jonathan Michael, New York, New York as the name of the workers' firm petitioning for trade adjustment assistance.

Under the Appendix Table, TA-W-25,168, Johnathan Michael; the workers' firm should be Kirkland Hall, New York, New York instead of Jonathan Michael, New York, New York.

Signed at Washington, DC, this 15th day of April 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-9305 Filed 4-18-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,290]

Lastec, Inc., Hillsboro, OR; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Lastec, Incorporated, Hillsboro, Oregon. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-25,290; Lastec, Incorporated, Hillsboro, Oregon (April 9, 1991)

Signed at Washington, DC this 15th day of April, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-9297 Filed 4-18-91; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,470 and TA-W-25,472]

United States Sales and Marketing Group, NCR Corp., Columbia, SC, Rancho Bernardo, CA; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 25, 1991 in response to a worker petition which was filed on February 25, 1991 on behalf of workers at the Columbia, South Carolina and Rancho Bernardo, California plants of the United States Sales and Marketing Group of NCR Corporation.

The Department has determined that the petitioning group of workers of NCR Corporation, Network Product Division, St. Paul, Minnesota (TA-W-25,471) did not represent the workers in the Columbia, South Carolina and Rancho Bernardo, California facilities of NCR USG (United States Sales and Marketing Group), therefore further investigation in these two cases would serve no purpose, and the investigations have been terminated.

Signed at Washington, DC this 12th day of April, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-9303 Filed 4-18-91; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of April 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,280; Walbro Automotive, Meriden, CT

TA-W-25,387; Hargro Industrial Packaging, Cedar Grove, NJ

TA-W-25,349; Shelby Standard, Inc., Shelby, OH

TA-W-25,309; Bojud Knitting Mills, Inc., Amsterdam, NY

TA-W-25,363; Gloray Knitting Mills, Inc., Robesonia, PA

TA-W-25,425; J Wood Division WCI, Milroy, PA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-25,080; Standard Motor Products, Inc., Long Island City, NY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,397; Plumley Rubber Co., Belzone, MS

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,393; Munsingwear, Inc., Homing, OK

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA-W-25,364; Gloray Knitting Mills, Inc., Retail Outlet, Robesonia, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,407 and TA-W-25,408; Westbrook Wood Products, Inc., Norway, OR and Coquille, OR

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-25,416; Data General Corp, Education & Conference Center Woodstock, CT

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-25,392; Mid-Atlantic Container, Linden, NJ

U.S. imports of steel drums are negligible during the period under investigation.

TA-W-25,384; Eastern Airlines, Inc., Sea-Tac International Airport Seattle, WA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–25,424; Hermance Machine Co., Williamsport, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–25,382; Custom Glass Industries, Vancouver, WA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,376; Zwicker Knitting Mills, Appleton, WI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–25,371; Sam Galloway Ford, Inc., Ft. Myers, FL

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–25,375; Sun Plywood, Inc., North Bend, OR

U.S. imports of softwood plywood and veneer were negligible during the period under investigation.

TA–W–25,360; Easco Aluminum Parlins, NJ

U.S. imports of aluminum declined absolutely and relative to domestic shipment in 1989 compared to 1988.

TA–W–25,368; Lee C. Moore Corp., Neville Island, PA

U.S. imports of oil and gas field machinery were negligible in 1989 and 1990.

Affirmative Determinations

TA–W–25,444; Universal/Univis, Inc., North Attleboro, MA

A certification was issued covering all workers separated on or after February 7, 1990.

TA–W–25,3612; Fasco D.C. Motors, Morristown, TN

A certification was issued covering all workers separated on or after January 4, 1990.

TA–W–25,379; Airfoil Forging Textron, Euclid, OH

A certification was issued covering all workers separated on or after January 28, 1990.

TA–W–25,377; Academy Knitters (Academy), Williamstown, NJ

A certification was issued covering all workers separated on or after January 31, 1990.

TA–W–25,378; Academy Knitters (Saybrook), Williamstown, NJ

A certification was issued covering all workers separated on or after January 31, 1990.

TA–W–25,390; Lord Jeff Knitting Co., Inc., Norwood, NJ

A certification was issued covering all workers separated on or after January 31, 1990.

TA–W–25,313; Denman Tire Corp, Warren, OH

A certification was issued covering all workers separated on or after January 7, 1990.

TA–W–25,391; Marie Coat, Clifton, NJ

A certification was issued covering all workers separated on or after January 30, 1990.

TA–W–25,337; Carter Footwear, Inc., Wilkes Barre, PA

A certification was issued covering all workers separated on or after July 27, 1990.

TA–W–25,170; Laura Fashions, Inc., Avoca, PA

A certification was issued covering all workers separated on or after November 15, 1989.

TA–W–25,417; Ditto Apparel of California, Westlaco, TX

A certification was issued covering all workers separated on or after February 1, 1990.

TA–W–25,230; Tredegar Molded Products, Brooklyn Heights, OH

A certification was issued covering all workers separated on or after December 10, 1989 and before December 21, 1990.

TA–W–25,295; New England Sportswear Co, Peabody, MA

A certification was issued covering all workers separated on or after January 4, 1990.

TA–W–25,287; Head Sportswear, D & B Manufacturing Div., Columbia, MD

A certification was issued covering all workers separated on or after January 5, 1990.

TA–W–25,396; Old Dominion Glove Co., Austinville, VA

A certification was issued covering all workers separated on or after January 30, 1990.

I hereby certify that the aforementioned determinations were issued during the month of April, 1991. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: April 15, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance

[FR Doc. 91–9296 Filed 4–18–91; 8:45 am]

BILLING CODE 4510–30–M

Attestations Filed by Facilities Using Nonimmigrant Aliens As Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directors, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process

The Employment and Training Administration has established a voice-mail service for the H–1A nurse attestation process. Call Telephone Number: 202–535–0643 (this is not a toll-free number). At that number, a caller can:

(1) Listen to general information on the attestation process for H–1A nurses;

(2) Request a copy of the Department of Labor's regulations (20 CFR part 655, subparts D and E, and 29 CFR part 504, Subparts D and E) for the attestation process for H–1A nurses, including a copy of the attestation form (form ETA 9029) and the instructions to the form;

(3) Listen to information on H–1A attestations filed within the preceding 30 days;

(4) Listen to information pertaining to public examination of H–1A attestations filed with the Department of Labor;

(5) Listen to information on filing a complaint with respect to a health care facility's H–1A attestation (however, see the telephone number regarding complaints, set forth below); and

(6) Request to speak to a Department of Labor employee regarding questions not answered by Nos. (1) through (4) above.

Regarding the Complaint Process

Questions regarding the complaint process for the H–1A nurses attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–523–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons which to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 12th day of April, 1991.

Robert A. Schaerfl,

Director, United States Employment Service.

[FR Doc. 91–9298 Filed 4–18–91; 8:45 am]

BILLING CODE 4510–30–M

Division of Foreign Labor Certifications Approved Attestations

[04/01/91 to 04/05/91]

CEO-Name/Facility Name/Address	State	Approval Date
Mr. Dick W. Dillingham, Long Beach Health & Allied Services, Inc., Long Beach, CA 90813, 213–599–3551	CA	04/02/91
Mr. J.D. Northway, Valley Children's Hospital, 3151 N. Millbrook, Fresno, CA 93703, 209–225–3000	CA	04/02/91
Mr. James E. Sauer, Jr., Saint Joseph Medical Center, 501 S. Buena Vista, Burbank, CA 91505, 818–843–5111	CA	04/02/91
Mr. George Graham, Torrance Memorial Med. Ctr., 3330 Lomita Boulevard, Torrance, CA 90505, 213–517–4790	CA	04/05/91
Ms. Janet Parodi, Long Beach Community Hosp., 1720 Termino Ave., Long Beach, CA 90804, 213–498–1000	CA	04/05/91
Mr. David W. Osborne, Norwalk Hospital, Maple Street, Norwalk, CT 06856, 203–852–2000	CT	04/02/91
Mr. Stephen Bernstein, DelRay Community Hospital, 5352 Linton Boulevard, Delray Beach, FL 33484, 800–926–8282	FL	04/02/91
Mr. Jack Stephens, Lakeland Regional Med. Ctr., 1324 Lakeland Hills Blvd., Lakeland, FL 33804, 813–687–1100	FL	04/02/91
Mr. A. Jason Geisinger, Conv. Center of Delray Beach, 5430 Linton Blvd., Delray Beach, FL 33484, 407–495–3188	FL	04/05/91
Mr. A. Jason Geisinger, Conval. Ctr. of the Palm Beach, First Healthcare Corp., d.b.a., West Palm Beach, FL 33401, 407–832–6409	FL	04/05/91
Mr. Michael B. Cronin, St. Joseph Hospital, 2500 Harbour Blvd., Port Charlotte, FL 33952, 813–625–4122	FL	04/05/91
Mr. A Jason Geisinger, Carrollwood Care Center, First Healthcare Corp., d.b.a, Tampa, FL 33625, 813–960–1969	FL	04/05/91
Straub Clinic & Hospital, 888 S. King St., Honolulu, HI 96822, 808–522–4000	HI	04/02/91
Ms. Bonnie K. Lindgren, Holy Family Health Center, 2380 E. Dempster Street, Des Plaines, IL 60016, 708–296–3335	IL	04/02/91
Mr. F. Scott Winslow, Norwegian American Hosp., 1044 N. Francisco, Chicago, IL 60622, 312–292–8200	IL	04/02/91
Mr. Leo M. Kenikoff, Presbyterian—St. Luke's Med, 1653 W. Congress Parkway, Chicago, IL 60612, 312–942–5000	IL	04/05/91
Mr. Paul L. Broughton, Harper Hospital, 3990 John R. Street, Detroit, MI 48201, 313–745–9053	MI	04/02/91
Mr. Len B. Preslar, Jr., North Carolina Baptist Hosps., 300 South Hawthorne Road, Winston-Salem, NC 27103, 919–748–2011	NC	04/05/91
Mr. John L. Yoder, Rahway Hospital, 865 Stone Street, Rahway, NJ 07065, 908–381–4200	NJ	04/02/91
Sister Elizabeth Ann Maloney, St. Elizabeth Hospital, 225 Williamson Street, Elizabeth, NJ 07207, 908–527–5326	NJ	04/02/91
Mr. Theodore R. Jamison, Interfaith Medical Center, 555 Prospect Place, Brooklyn, NY 111238, 718–935–7000	NY	04/02/91
Mr. Michael S. Kaminski, Flushing Hosp. Med. Ctr., 45th Avenue at Parsons Blvd., Flushing, NY 11355, 718–670–5000	NY	04/02/91
Lt. Col. Ronald Lyons, Booth Memorial Med. Ctr., 56–45 Main Street, Flushing, NY 11355, 718–670–1231	NY	04/02/91
Ms. Marilyn Lichtman, DeWitt Nursing Home, 211 East 79th Street, New York, NY 10021, 212–879–1600	NY	04/02/91
Mr. G.B. Serrill, Ellis Hospital, 1101 Nott St., Schenectady, NY 12308, 518–382–4141	NY	04/02/91
Mr. John C. Federspiel, Peekskill Community Hospital, 1980 Crompond Road, Peekskill, NY 10566, 914–737–9000	NY	04/02/91
Mr. Richard N. Yezzo, St. Clare's Hosp. & Health Ct, 415 West 51st St., New York, NY 10019, 212–586–1500	NY	04/05/91
Mr. Stanley F. Hupfeld, Baptist Med. Ctr. of Oklahoma, 3300 NW Expressway, Oklahoma City, OK 73112, 405–949–4045	OK	04/02/91
Ms. Judith P. Smith, Daughters of Charity Health S, 1201 W. 38th St., Austin, TX 78705, 512–323–1000	TX	04/05/91
Mr. Don Ciulla, Denton Regional Medical Ctr., 4405 North I–35, Denton, TX 76201, 817–566–4000	TX	04/05/91
Gerald R. Bunk, Riverside Regional Med. Ctr., 500 J. Clyde Morris Blvd., Newport News, VA 23601, 804–599–2025	VA	04/05/91
Mr. Laurel L. Wilkening, U. of Wash. Harborview Med. C, 325 Ninth Avenue, Seattle, WA 98104, 206–685–3247	WA	04/05/91

Total Attestations = 32

[FR Doc. 91–9298 Filed 4–18–91; 8:45 am]

BILLING CODE 4510–30–M

Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

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SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 5th day of April, 1991.

Robert A. Schaerfl,

Director, United States Employment Service.

Division of Foreign Labor Certifications Approved Attestations

[3/25/91 to 3/29/91]

CEO-Name/facility name/address	Approval State	Date
Mr. Makoto Nakayama, San Gabriel Valley Medical Ce, 218 South Santa Anita Street, San Gabriel, CA, 91776 818–570–6526.	CA	03/27/91
Mr. Ronald E. Dahlgren, Queen of Angels Hollywood, Presbyterian Med. Ctr., Los Angele, CA 90027, 213–913–4840.	CA	03/27/91
Mr. William K. Piche, Memorial Hospitals Association, 1700 Coffee Road, Modesto, CA 95355, 209–526–4500.	CA	03/27/91
Mr. Calvin Callaway, Health Care of Fullerton, Inc., 2222 North Harbor Boulevard, Fullerton, CA 92635, 714–992–5701.	CA	03/27/91
Mr. Kenneth F. Colling, San Diego Kaiser Fnd. Hosp., Calif. Permanente Med. Grp., San Diego, CA 92120, 619–528–5000.	CA	03/27/91
Mr. Bruce G. Satzger, Valley Medical Center of Fresno, 445 South Cedar Avenue, Fresno, CA 93702 209–453–5011.	CA	03/28/91
Mr. Michael Sheehy, Silver Hill Foundation, Box 1177, New Canaan, CT 06840, 203–966–3561.	CT	03/27/91
Mr. William C. Sager, Walker Memorial Hospital, P.O. Box 1200, Avon Park, FL 33825, 813–453–7511.	FL	03/28/91
Mr. A. Jason Geisinger, Medicenter-Tampa, First Healthcare Corp., d.b.a., Tampa, FL 33614 813–872–2771.	FL	03/28/91
Mr. Milton Siepman, Smyrna Hospital, 3949 South Cobb Drive, Smyrna, GA 30080, 404–439–0710.	GA	03/26/91
Mr. David Handel, Indiana University Hospitals, 926 W. Michigan St. C–106, Indianapolis, IN 46202, 317–274–3717.	IN	03/27/91

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[3/25/91 to 3/29/91]

CEO-Name/facility name/address	Approval State	Date
Mr. William K. Brinkert, St. John of God Hospital, 296 Allston Street, Brighton, MA 02146, 617-277-5750.	MA	03/27/91
Mr. A. Jason Geisinger, VFW Parkway Nursing Home, First Healthcare Corp., d.b.a., West Roxbury, MA 02132, 617-325-1688.	MA	03/28/91
Mr. A. Jason Geisinger, Woodridge House Nursing Center, 596 Summer Street, Brockton, MA 02402, 508-586-1467.	MA	03/28/91
S. Blanche LaRose-SCH-Admin., Bethany Health Care Ctr., 97 Bethany Road, Framingham, MA 01701, 508-872-6750.	MA	03/28/91
Mr. A. Jason Geisinger, Quincy Nursing Home, First Healthcare Corp., d.b.a., Quincy, MA 02169, 617-478-2820.	MA	03/28/91
Mr. A. Jason Geisinger, Hillhaven—Sunnybrook Convales, First health Care Corp., d.b.a., Raleigh, NC 27610, 919-231-6150.	NC	03/27/91
Mr. A. Jason Geisinger, Hillhaven Convalescent Center, First Health Care Corp., d.b.a., Raleigh, NC, 27605 919-828-6251.	NC	03/27/91
Mr. William J. Donelano, Duke University, Erwin Road, Durham, NC 27710 919-684-6729.	NC	03/28/91
Mr. Richard J. Leone, The Medical Center of Ocean C. 2121 Edgewater Place, Point Pleasant, NJ 08742, 201-892-1100.	NJ	03/28/91
Ms. Marie D. Moore, Oakland Care Center Inc., DBA, Oakland Care Center, Oakland, NJ 07436 201-337-3300.	NJ	03/28/91
Mr. Dennis Doody, The Medical Center at Princeton, 253 Witherspoon Street, Princeton, NJ 08540, 609-4335.	NJ	03/28/91
Ms. Carol Raphael, VNS Home Care, 1670-8 East 17th Street, Brooklyn, NY 11229, 718-375-7485.	NY	03/27/91
Ms. Catherine Cappello-Longo, Haym Salomon Home for the Age, 2300 Cropsey Avenue, Brooklyn, NY 11214, 718-373-1700.	NY	03/27/91
Mr. George Adams, Lutheran Medical Cener, 150 55 Street, Brooklyn NY 11220, 718-630-7000.	NY	03/28/91
Mr. Michael Delicce, St. Agnes Hospital, 305 North Street, White Plains, NY 10605, 914-681-4507.	NY	03/28/91
Mr. R. Reed Fraley, The Ohio State University Hos, 450 West 10th Avenue, Columbus, OH 43210, 614-293-5555.	OH	03/28/91
Mr. Igbal Paroo, Hahnemann University, Broad & Vine MS 605, Philadelphia, PA 19102, 215-448-7441.	PA	03/28/91
Mr. D.K. Oglesby, Jr., Anderson Memorial Hospital, 800 North Fant Street, Anderson, SC 29621, 704-866-8596.	SC	03/26/91
Mr. Charles C. Boone, Spartanburg Reg'l Med. Ctr., 101 East Wood Street, Spartanburg, SC 29303, 803-591-6000.	SC	03/27/91
Mr. Lane Labine, Chesterfield General Hosp., P.O. Box 151, Cheraw, SC 29520, 803-537-7881.	SC	03/28/91
Mr. Alan J. Chapman, Jr., M.D., P.A., Alan J. Chapman, Jr. M.D., P.A., 902 Frostwood, Houston, TX 77024, 713-467-1365.	TX	03/25/91
Mr. Ken Sample, South Park Medical Center, 6610 Quaker Ave., Lubbock, TX 79413, 806-792-7112.	TX	03/27/91
Mr. Paul C. Poparad, Midland Memorial Hosp., 2200 West Illinois, Midland, TX 79701, 915-685-1111.	TX	03/27/91
Mr. J. Barry Shevchuk, Houston Northwest Medical Cen, 710 FM 1960 West, Houston, TX 77090, 713-440-2288.	TX	03/27/91
Mr. Jeffrey B. Barber, R.E. Thomason General Hospital, 4815 Alameda Ave., El Paso, TX 79905, 915-544-1200.	TX	03/27/91
Mr. Don Olson, Virginia Mason, P.O. Box 1930, Seattle, WA 98111, 206-624-1144.	WA	03/27/91

Total Attestations 37

[FR Doc. 91-9300 Filed 4-18-91; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the descibed classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing

Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fring benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Adminsitration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page numbers(s).

Florida:
FL91-47 (Apr. 19, 1991)..... p. 218a, p. 218b.
FL91-48 (Apr. 19, 1991)..... p. 218c, p. 218d.
Georgia:
GA91-40 (Apr. 19, 1991).... p. 302c, p. 302d.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I

Connecticut:
CT91-1 (Feb. 22, 1991)..... p. 63, pp. 65, 69.
Florida:
FL91-2 (Feb. 22, 1991)..... p. 103, p. 104.
FL91-5 (Feb. 22, 1991)..... p. 113, p. 114.
FL91-6 (Feb. 22, 1991)..... p. 115, p. 116.
FL91-7 (Feb. 22, 1991)..... p. 117, p. 118.
FL91-17 (Feb. 22, 1991)..... p. 141, p. 142.
FL91-20 (Feb. 22, 1991)..... p. 149, p. 150.
FL91-21 (Feb. 22, 1991)..... p. 151, p. 152.
FL91-22 (Feb. 22, 1991)..... p. 153, p. 154.
FL91-23 (Feb. 22, 1991)..... p. 155, p. 156.
FL91-24 (Feb. 22, 1991)..... p. 157, p. 158.
FL91-26 (Feb. 22, 1991)..... p. 161, p. 162.
FL91-29 (Feb. 22, 1991)..... p. 167, p. 168.
FL91-30 (Feb. 22, 1991)..... p. 169, p. 170.
FL91-31 (Feb. 22, 1991)..... p. 171, p. 172.
FL91-32 (Feb. 22, 1991)..... p. 173, pp. 174-175.
FL91-33 (Feb. 22, 1991)..... p. 177, p. 178.
Kentucky:
KY91-12 (Feb. 22, 1991).... p. 357, p. 358.
KY91-23 (Feb. 22, 1991).... p. 379, p. 380.
KY91-24 (Feb. 22, 1991).... p. 381, p. 382.
Maryland:
MD91-23 (Feb. 22, 1991)... p. 524a.
North Carolina:
NC91-21 (Feb. 22, 1991).... p. 651, p. 652.
New York:
NY91-8 (Feb. 22, 1991)..... p. 857, pp. 858-859, pp. 861-862, pp. 864, 868.
Tennessee:
TN91-5 (Feb. 22, 1991)..... p. 1203, p. 1204.

Volume II

Indiana:
IN91-8 (Feb. 22, 1991)..... p. 337, p. 338.
IN91-9 (Feb. 22, 1991)..... p. 339, p. 340.
Michigan:
MI91-7 (Feb. 22, 1991)..... p. 515, pp. 521, 523-524, p. 529.
Missouri:
MO91-1 (Feb. 22, 1991)..... p. 651, pp. 653, 661, pp. 669, 671.
MO91-2 (Feb. 22, 1991)..... p. 673, p. 675.
Kansas:
MO91-2 (Feb. 22, 1991)..... p. 673, p. 675.
Nebraska:
NE91-2 (Feb. 22, 1991)..... p. 749.
NE91-9 (Feb. 22, 1991)..... p. 767, p. 768.
NE91-11 (Feb. 22, 1991)..... p. 771, p. 772.

Volume III

Arizona:
AZ91-3 (Feb. 22, 1991)..... p. 27, p. 28.
Nevada:
NV91-1 (Feb. 22, 1991)..... p. 299, pp. 300, 302.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 10th Day of April 1991.

Alan L. Moss,

Director, Division of Wage Determinations

[FR Doc. 91-9073 Filed 4-18-91; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

Peabody Coal Co., et al; Petition for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Peabody Coal Company

[Docket No. M-91-27-C]

Peabody Coal Company, P.O. Box 550, Morganfield, Kentucky 42437 has filed a petition to modify the application of 30 CFR 75.305 (weekly examination for hazardous conditions) to its Camp 2 Underground Mine (I.D. No. 15-02705) located in Union County, Missouri. Due to roof conditions, the petitioner proposes to monitor methane and oxygen on the surface at the exhaust fanshaft once a week.

2. Peabody Coal Company

[Docket No. M-91-28-C]

Peabody Coal Company, P.O. Box 550, Morganfield, Kentucky 42437 has filed a petition to modify the application of 30 CFR 75.306 (weekly ventilation examinations) to its Camp 2 Underground Mine (I.D. No. 15-02705) located in Union County, Missouri. Due to roof conditions, the petitioner proposes to monitor methane and oxygen on the surface at the exhaust fanshaft once a week.

3. Black Mesa Pipeline, Inc.

[Docket No. M-91-29-C]

Black Mesa Pipeline, Inc., P.O. Box 678, Kayenta, Arizona 86033 has filed a petition to modify the application of 30 CFR 77.201-1 (tests for methane; qualified person; use of approved device) to its Slurry Preparation Plant (I.D. No. 02-01047) located in Navajo County, Arizona. Based upon a 20-year history of test results of no methane, the petitioner requests relief from testing for methane during operating shifts.

Request for Comments

Persons interested in these petitions may furnish written comments. These

comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 20, 1991. Copies of the petitions are available for inspection at that address.

Dated: April 11, 1991.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 91-9295 Filed 4-18-91; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

South Carolina Standards; Approval

1. Background

Part 1953 of title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On December 6, 1972, notice was published in the **Federal Register** (37 FR 25932) of the approval of the South Carolina plan and the adoption of subpart C to part 1952 containing the decision.

The South Carolina plan provides for the adoption of Federal standards as State standards after public hearing. Section 1953.20 of 29 CFR provides that "When * * * any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required."

By a letter dated September 9, 1988, from Edgar L. McGowan, Commissioner, South Carolina Department of Labor, to R. Davis Layne, Regional Administrator, and by letters dated January 2, 1990, and May 3, 1990 from Virgil W. Duffie, Jr., Commissioner, South Carolina Department of Labor, to R. Davis Layne, Regional Administrator, and incorporated as part of the plan, the State submitted the following amended State standards comparable to Federal Standards:

(1) Revision of 29 CFR 1910.120 with appendices A through D, Hazardous Waste Operations and Emergency Response (54 FR 9294, dated 3/6/89).

(2) Revision of 29 CFR 1910.1000 with Tables Z-1-A, Z-2, and Z-3, Air Contaminants (54 FR 2332, 1/19/89).

(3) Revision to 29 CFR 1910.66, subpart F, with appendices A through D, Powered Platforms for Building Maintenance (54 FR 31408, dated 7/28/89).

(4) New section to 29 CFR 1910.147, subpart J, Control of Hazardous Energy Source (Lockout/Tagout), and Redesignation (54 FR 36644, dated 9/1/89).

(5) Revisions, Corrections and Omissions to 29 CFR 1910.1000, Air Contaminants (54 FR 28054 and 28154, dated 7/5/89); (54 FR 36765, dated 9/5/89); and (54 FR 41243, dated 10/6/89).

(6) Amendments to 29 CFR 1910.1001, 1910.1101, and 1926.58, Asbestos, Tremolite, Anthophyllite and Actinolite (54 FR 30704, dated 7/21/89).

(7) Revisions to 29 CFR 1910.1025, Lead (54 FR 29142, dated 7/11/89).

(8) Corrections and Technical Amendments to 29 CFR 1910.1048, Formaldehyde (54 FR 29545, dated 7/13/89) and (54 FR 31765, dated 8/1/89).

(9) Redesignation of 29 CFR 1926.550(g), Cranes or Derricks Suspended Personnel Platforms (54 FR 15405, dated 4/18/89).

(10) Revision to 29 CFR 1926.800, and Redesignation of subchapter S, Underground Construction (54 FR 23824, dated 6/2/89).

(11) Revision to 29 CFR 1910.107(a)(2) to conform to the NFPA's latest definition of a "spray area."

(12) Typographical errors to 29 CFR 1910.147 are corrected.

(13) Corrections and Partial Stay of effective dates for two substances to 29 CFR 1910.1000, Air Contaminants (54 FR 47513, dated 11/15/89); (54 FR 50372, dated 12/6/89); and (55 FR 3723, dated 2/5/90).

(14) Partial response to court remand and Revisions to 29 CFR 1910 subpart Z and 1926 subpart D, Asbestos, Tremolite, Anthophyllite, and Actinolite (54 FR 52024, dated 12/20/89) and (55 FR 3724, dated 2/5/90).

(15) Statement of Reasons and Revisions to 29 CFR 1910.1025, Lead (55 FR 3146, dated 1/30/90).

(16) New section to 29 CFR 1910.1450, Occupational Exposure to Hazardous Chemicals in Laboratories (55 FR 3300, dated 1/31/90).

(17) New subpart P to 29 CFR 1926, Excavations, plus expanded definition of "competent person" (54 FR 45894, dated 10/31/89).

These standards were promulgated after public hearings held on May 2, 1989, November 21, 1989, and March 29, 1990, and filed with the South Carolina Secretary of State on May 2, 1989, November 21, 1989, and March 29, 1990, respectively, pursuant to Act 379, South Carolina Acts and Joint Resolutions, 1971 (sections 40-261 through 40-274 South Carolina Code of Laws, 1962).

2. Decision

Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards. The State standards are hereby approved.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement along with the approved plan may be inspected and copied during normal business hours at the following locations: Office of the Commissioner of Labor, South Carolina Department of Labor, 3600 Forest Drive, Columbia, South Carolina 29211; Office of the Regional Administrator, suite 587, 1375 Peachtree Street, NE., Atlanta, Georgia 30367; and Director of Federal State Operations, Room N3700, 200 Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR part 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds good cause exists for not publishing the supplement to the South Carolina State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are essentially identical to the comparable Federal standards and are deemed to be at least as effective.

2. The standards were adopted in accordance with procedural requirements of state law and further participation would be unnecessary.

This decision is effective April 19, 1991.

(Section 18, Pub. L. 91-596, 84 Stat, 16088 (29 U.S.C. 667))

Signed at Atlanta, Georgia, this 12th day of June 1990.

R. Davis Layne,

Regional Administrator.

[FR Doc. 91-9299 Filed 4-18-91; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91-34]

NASA Advisory Council University Relations Task Force; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council University Relations Task Force.

DATES: May 14, 1991, 9 a.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, room 7002, Federal Office Building 6, 400 Maryland Avenue, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia D. Fries, Code ADA-2, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-8766.

SUPPLEMENTARY INFORMATION: The NASA Advisory Council was established as an interdisciplinary group to advise senior management on the full range of NASA's programs, policies, and plans. The University Relations Task Force, reporting to the Council, will examine current forecasts of future national requirements for aerospace science and engineering and their supporting university infrastructure; it will also evaluate the degree, mechanisms, and appropriateness of NASA support for university programs in these fields. The Task Force is chaired by Dr. Steven Muller and is composed of 11 members. The meeting will be open to the public up to the seating capacity of the room, which is approxoimately 60 persons including Task Force members and other participants. Visitors will be requested to sign a visitor's register.

TYPE OF MEETING: Open.

Agenda

Tuesday, May 14, 1991

9 a.m.—Welcome and Introductions.
9:30 a.m.—Task Force Mission.
10 a.m.—Review of Previous Studies.
10:30 a.m.—Definition of Issues.
11:15 a.m.—Approaches to Study.
1 p.m.—NASA University Training Grants Program.
2 p.m.—Issues and Approaches (continued).
3:30 p.m.—Task Force Planning.
4 p.m.—Adjourn.

Dated: April 15, 1991.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 91-9213 Filed 4-18-91; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting

April 4, 1991.

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, DC on May 2-3, 1991.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to policies, programs, and procedures for carrying out her functions, and to review applications for financial support and gifts offered to the Endowment and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC. A portion of the morning and afternoon sessions scheduled on May 2-3, 1991, will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code because the Council will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated November 13, 1989.

The agenda for the sessions on May 2, 1991, will be as follows:

		Room
8:30-9 a.m.	Coffee for Council Members (Open to the Public).	526
Committee Meetings (Open to the Public) Policy Discussion:		
9-10 a.m.	Education Programs	M-14
	Fellowship Programs.	316-2
	Public Programs	415
	Research Programs/ Preservation Grants.	315
	State Programs/ Challenge Grants.	M-07
10 a.m. until Adjourned.	(Closed to the Public); Discussion of specific grant applications before the Council.	
2:30 p.m. until Adjourned.	Jefferson Lecture Committee (Closed to the Public); Discussion of Jefferson Lecture Nominees.	430

The morning session on May 3, 1991, will convene at 9 a.m., in the 1st Floor Council room, M-09, and will be open to the public. The agenda for the morning session will be as follows:

(Coffee for Staff and Council members will be served from 8:30-9 a.m.)

Minutes of the Previous Meeting; Reports

A. Introductory Remarks
B. Introduction of New Staff
C. Contracts Awarded in the Previous Quarter
D. Dates of Future Council Meetings
E. Application Report, Matching Report, and Status of Fiscal Year 1991 Funds
F. Legislative Report
G. Fiscal year 1992 Appropriation Request
H. Fiscal Year 1993 Budget Planning
I. Committee Reports on Policy and General Matters
   1. Education Programs
   2. Fellowship Programs
   3. Preservation Grants
   4. Research Programs
   5. Public Programs
   6. State Programs
   7. Challenge Grants
   8. Jefferson Lecture

The remainder of the proposed meeting will be given to the consideration of specific applications (closed to the public for the reasons stated above).

Further information about this meeting can be obtained from Catherine G. Wolhowe, Advisory Committee Management Officer, Washington, DC 20506, or call area code 202-786-0322.

Catherine G. Wolhowe,

Advisory Committee Management Officer.

[FR Doc. 91-9279 Filed 4-18-91; 8:45 am]

BILLING CODE 7536-01-M

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Overview Section) to the National Council on the Arts will be held on May 13, 1991 from 9 a.m.–5:30 p.m. in room M–14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m.–1:30 p.m. and 2 p.m.–5:30 p.m. The topics will be the director's report, budget, FY 93 guidelines and museum issues related to the guidelines, and discussion of issues of general interest to the Museum Program and the field.

The remaining portion of this meeting from 1:30 p.m.–2 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: April 15, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–9200 Filed 4–18–91; 8:45 am]

BILLING CODE 7537–01–M

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Composers Fellowships Section) to the National Council on the Arts will be held on May 14–15, 1991 from 9 a.m.–5:30 p.m. and May 16 from 9 a.m.–5 p.m. in room M–07 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on May 16 from 3 p.m.–5 p.m. The topics will be policy discussion and guidelines review.

The remaining portions of this meeting on May 14–15 from 9 a.m.–5:30 p.m. and May 16 from 9 a.m.–3 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's deiscretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained form Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: April 15, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–9199 Filed 4–18–91; 8:45 am]

BILLING CODE 7537–01–M

Visual Art, Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Visual Artists Fellowships/Paintings Section) to the National Council on the Arts will be held on May 13–16, 1991 from 9 a.m.–8 p.m. and May 17 from 9:30 a.m.–3:30 p.m. in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on May 17 from 2 p.m.–3:30 p.m. The topics will be policy and guidelines recommendations.

The remaining portions of this meeting on May 13–16 from 9 a.m.–8 p.m. and May 17 from 9 a.m.–2 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of March 5, 1991, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the

Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Martha Y. Jones, Acting Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Dated: April 15, 1991.

Martha Y. Jones,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 91–9201 Filed 4–18–91; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Ethics & Values Studies; Meeting

The National Science Foundation announces the following:

Name: Advisory Panel for Ethics & Values Studies.

Date/Time: May 9, 1991, 8:30 am to 5 pm. May 10, 1991, 8:30 am to 5 pm.

Place: River Inn, 924 25th Street, NW, Board Room.

Type of Meeting: Part Open May 9, 1991–8:30 am to 10 am. Closed Remainder.

Contact: Vivian Weil, Program Director, Ethics and Values Studies, National Science Foundation, Washington, DC 20550, Telephone (202) 357–9894, Room 312.

Summary Minutes: May be obtained from the contact person at the above address.

Purpose of Panel Meeting: To provide advice and recommendations concerning support for research in Ethics and Values Studies in Science, Technology, and Society.

Agenda: Open—General discussion of approaches to "ethics" and "values" in the discourse of the physical and natural sciences, social sciences, and humanities disciplines.

Closed—To review and evaluate research proposals and projects as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b (c), Government in the Sunshine Act.

Dated: April 15, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–9221 Filed 4–18–91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Human Cognition and Perception, Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Human Cognition and Perception.

Date and Time: May 6–8, 1991, 9 a.m. to 5 p.m.

Place: National Science Foundation, 1800 G Street, NW., room 1242, Washington, DC.; May 8: The Inn at Foggy Bottom, 824 New Hampshire Avenue, NW., Washington, DC.

Type of Meeting: Part Open—Closed 5–6—9 a.m. to 5 p.m., Closed 5–7—9 a.m. to 5 a.m., Closed 5–8—9 a.m. to 10 p.m., Open 5–8—10 a.m. to 12 noon, Closed 5–8—1 a.m. to 5 p.m.

Contact Person: Dr. Joseph L. Young, Program Director, Human Cognition and Perception, room 320, National Science Foundation, Washington, DC 20050, Telephone (202) 357–9898.

Purpose of Meeting: To provide advice and recommendations concerning support for research in human cognition and perception.

Agenda: Open—General discussion of the research trends in human cognition and perception. Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being discussed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of the Government in the Sunshine Act.

Dated: April 15, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–9222 Filed 4–18–91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Panel for Neural Mechanisms of Behavior; Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Neural Mechanisms of Behavior.

Date and Time: May 6, 7, and 8, 1991, 9 a.m. to 5 p.m.

Place: National Science Foundation, 1800 G Street, NW., Washington, DC, room 1242.

Type of Meeting: Closed 5/6—9 a.m. to 5 p.m., Closed 5/7—9 a.m. to 5 p.m., Open 5/8—9:30 a.m. to 11:30 a.m., Closed 5/8—11:30 a.m. to 5 p.m.

Contact Person: Dr. Kathie L. Olsen, Program Director for Behavioral Neuroendocrinology, National Science Foundation, Washington, DC, 20550, room 320.

Purpose of Meeting: To provide advice and recommendations concerning support for research in neural mechanisms of behavior.

Agenda: Open—To discuss research trends and opportunities in neural mechanisms of behavior. Closed—To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of the Government in the Sunshine Act.

Dated: April 15, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–9223 Filed 4–18–91; 8:45 am]

BILLING CODE 7555-01-M

Advisory Committee for Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Physics.

Date and Time: May 6, 1991; 9 a.m. to 3 p.m. (Open). 3 p.m. to 5 p.m. (Closed). May 7, 1991; 8:30 a.m. to 5 p.m. (Open).

Place: Room 540, National Science Foundation, 1800 G Street, NW., Washington, DC 20550.

Type of Meeting: Part open.

Contact Person: Dr. Marcel Bardon, Director, Division of Physics, Room 341, National Science Foundation, Washington, DC 20550, (202) 357–7985.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning support for research and education in physics.

Agenda: Open—May 6, 1991; 9 a.m. to 3 p.m.—Discussion of FY 1991 and FY 1992 Budgets, Long Range Planning issues, future review topics and other items of interest to the administration of programs of the Division of Physics. Closed—May 6, 1991 3 p.m. to 5 p.m.—To review and evaluate research proposals. Open—May 7, 1991; a.m. and p.m.—Continuation of discussions of previous day.

Reason for Closing: The review of proposal actions will include information of a proprietary or confidential nature, including technical information; financial data, and personal information concerning individuals associated with the proposals. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would improperly be disclosed.

Dated: April 15, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–9224 Filed 4–18–91; 8:45 am]

BILLING CODE 7555-01-M

Special Emphasis Panel for Social and Economic Science; Meeting

The National Science Foundation announces the following meeting:

Name: Special Emphasis Panel for Social and Economic Science.

Date/Time: May 6, 1991; 8:30 a.m. to 6 p.m., May 7, 1991; 8:30 a.m. to 5 p.m.

Place: Room 523, National Science Foundation, 1800 G St., NW., Washington, DC 20550.

Type of Meeting: Closed.

Contact Person: Dr. Thomas J. Baerwald, Coordinator, Human Dimensions of Global Environmental Change Initiative, Division of Social and Economic Science, National Science Foundation, 1800 G St., NW.; room 336, Washington, DC 20550, Telephone: 202/357–7326.

Purpose of Meeting: To provide advice and recommendations concerning research proposals on the Human Dimensions of Global Environmental Change.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for Closing: The proposals reviewed contained information of a proprietary or confidential nature, including technical information, financial data (such as salaries), and personal information concerning individuals associated with the proposals. These matters are within the exemptions (4) and (6) of 5 U.S.C. 552b, Government in the Sunshine Act. February 18, 1977.

Dated: April 15, 1991.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 91–9225 Filed 4–18–91; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittees on Regulatory Activities and Containment Systems; Meeting

The ACRS Subcommittees on Regulatory Activities and Containment Systems will hold a joint meeting on May 8, 1991, room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, May 8, 1991—8:30 a.m. until the conclusion of business.

The Subcommittees will review the proposed final revision to appendix J to 10 CFR part 50, "Leakage Rate Testing of Containments of Light-Water-Cooled Nuclear Power Plants," and an associated Regulatory Guide.

Oral statements may be presented by members of the public with the concurrence of the Subcommittees Chairmen; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those sessions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittees, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairmen's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the Designated Federal Official, Mr. Dean Houston (telephone (301 492–9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: April 15, 1991.

Gary R. Quittschreiber,

Chief, Nuclear Reactors Branch.

[FR Doc. 91–9231 Filed 4–18–91; 8:45 am]

BILLING CODE 7590–01–M

Solicitation of Public Comments on Generic Issue 23, "Reactor Coolant Pump Seal Failure"; and Draft Regulatory Guide; Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on the staff's current understandings, findings, and potential recommendations regarding Generic Issue 23 (GI–23), "Reactor Coolant Pump Seal Failure." Based on available information, the staff has prepared a draft Regulatory Analysis for GI–23, Reactor Coolant Pump Seal Failure (Draft NUREG–1401). Based on the NRC staff's current knowledge and perspective the NRC staff has identified an approach for the resolution of GI–23, Draft Regulatory Guide DG–1008. Additional documents that constitute the staff's current understanding of GI–23 and contain the technical bases and related information are NUREG/CR–4948, "Technical Findings Related to GI–23, Reactor Coolant Pump Seal Failure," and NUREG/CR–5167, "Cost/Benefit Analysis for GI–23, Reactor Coolant Pump Seal Failure."

The Draft Regulatory Guide, "Reactor Coolant Pump Seals," is temporarily identified as DG–1008 and is intended for Division 1, "Power Reactors." It would describe means acceptable to the NRC staff to enhance safety by including the reactor coolant pump seals in the plant's quality assurance program. The draft guide also proposes methods for enhancing the capability of nuclear power plants to withstand loss-of-seal-cooling events.

Reactor coolant pumps (RCPs) contain mechanical seals to limit the leakage of pressurized coolant from the reactor coolant system to the containment during normal operation. These seals are designed to be cooled at all times and therefore may be subject to large leak rates during events that involve loss of all seal cooling such as station blackout. Under such postulated conditions, seal failure could cause a significant loss of reactor coolant, and normal makeup systems and the emergency core cooling systems may not be available. Thus, this safety concern could directly affect the probability of core damage sequences in some plants.

The approach for resolution identified by the staff deals with both normal RCP operation and loss of seal cooling events and is based on information currently available to the staff. As discussed in more detail below, the staff is soliciting comments and additional information to ensure that all relevant information is considered prior to reaching a decision on resolution.

During normal operation in the past, RCP seals experienced a number of degradations and failures. Some of these resulted in seal leakage sufficient to exceed normal makeup capability and thus were classified as loss-of-coolant accidents (LOCA). However, in recent years the rate of seal failures appears to have decreased by roughly 50 percent. (See appendix A of Draft NUREG–1401.) Perhaps more importantly, during the past several years there have been no seal failures with a high enough leak rate to be classified as a LOCA. Some of the information solicited below in specific areas is aimed at providing a better understanding of the technical reasons for this apparent improvement of seal performance during normal operation.

Regarding loss-of-seal-cooling events, the staff developed a probabilistic model that is largely based on a model proposed by Westinghouse for the RCPs Westinghouse has designed and manufactured. The staff believes that the strengths of the model are (1) the event tree portion, which shows the possible failure modes during loss of seal cooling, and (2) the capability to

incorporate the magnitude of leakage for the various failure modes. However, the probability of occurrence of each failure mode is quite uncertain.

Comments are invited from interested organizations, groups, and individuals on the above-mentioned documents and the following specific areas:

1. The priority for the resolution of Generic Issue 23 was originally based on the number and the magnitude of seal leaks that occurred prior to 1983. The failure rate appeared to exceed the assumptions made for the WASH–1400 study for small loss-of-coolant accidents by an order of magnitude. There appears to be some evidence that RCP seal operating experience has since improved, at least in the magnitude of leakage from seal failures. The NRC is seeking data to determine if this is the case and whether the apparent improvement is applicable to all RCP seals, to those from specific manufacturers, or to those that had particular quality assurance provisions applied during design, installation, operation, and maintenance.

1.1 Has your operating experience with the RCP seals changed since 1983? If it has, then information regarding the history of RCP failures, including occurrences of forced outages is of interest. Information regarding all types of operation, including startup, is desired.

1.2 If your operating experience has changed, to what do you attribute the change (e.g., improved quality assurance and quality control, improved maintenance, better procedures, improved instrumentation, design changes)?

1.3 How often are seals being routinely replaced (e.g., every refueling)?

2. The NRC staff is interested in obtaining any available data regarding degraded cooling or loss of cooling to the seals to support assertions that seals can survive long periods of time (i.e., hours) without cooling.

3. The staff acknowledges that procedures related to the operation of the seals play an important role in avoiding a small-break LOCA caused by seal failure. It is not clear that past and current treatment of the seals reflect their safety importance. The NRC staff is therefore considering the need for improvements in the related procedures, training and information provided to operators and their actions.

3.1 Are there procedures currently in place that are intended to prevent seal leaks from becoming small-break LOCAs during both normal plant operation and loss-of-seal-cooling events such as station blackout? Are the required operator actions (e.g., isolating leakoff lines) the same for normal plant operation and loss-of-seal-cooling events?

3.2 Has the RCP instrumentation been evaluated to determine whether operators have sufficient information to implement the procedures?

3.3 How is RCP seal vendor information used in establishing operation and maintenance practices for the RCP seals?

3.4 In some cases, industry practice allows continued plant operation with the RCP seal when first or second stages have failed. Do you limit this practice? If so, what are the limiting conditions?

3.5 What additional quality assurance and procedural measures can be taken regarding RCP seals to improve safety?

4. As part of the probabilistic risk assessment performed for GI–23, a seal model (appendix A of NUREG/CR–5167) was developed for use in estimating the core damage frequency associated with loss of RCP seal cooling.

4.1 Is the staff's model, or other models, adequate to predict RCP seal leakage (i.e., modes of seal failure, time-dependent failure probability, and leakage estimates) and handle the uncertainties in the models? Do the models correlate to actual plant or test data?

4.2 Of particular interest to the staff are alternatives to the probabilistic RCP seal leakage model developed for Westinghouse seals and alternative models for other seal designs (i.e., for seals by Byron-Jackson, Bingham International, or Combustion-Engineering/KSB) to predict seal leakage during loss-of-all-seal-cooling events. Can you provide information regarding any alternative models?

5. In exploring alternatives to providing additional seal cooling, one approach might be to test the existing seals to demonstrate conclusively that they will not leak excessively if not cooled for extended periods of time, even though such conditions exceed the seal design basis and possibly the conditions of the warranty. If testing was an option to demonstrate acceptable seal performance under loss of cooling conditions, what conservative conditions should be imposed on the RCP seal for the test program (e.g., length of time, maximum wear on seal, number of tests)?

6. If, after consideration of public comments, the NRC decides that additional RCP seal requirements are necessary, what method of imposition should be used (e.g., by rulemaking, orders, or generic letter)?

In anticipation of a large response from the public and industry, the NRC staff requests that comments be annotated to indicate which question is being addressed in order to facilitate staff response to public comments. Commenters may submit, in addition to the original paper copy, a copy of the letter in an electronic format on IBM POC–DOS compatible 3.5 or 5.25 inch double sided double density (DS/DD) diskettes. Data files should be provided in ASCII code or, if formatted text is required, data files should be provided in IBM Revisable-Form Text Document Content Architecture (RFT/DCA) format.

The comment period expires on July 31, 1991. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except to comments received by this date. Comments should be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch. Copies of comments received may be examined and copied for a fee at the NRC Public Document Room, 2120 L Street NW., Washington, DC.

For further information contact: Syed K. Shaukat, Division of Safety Issue Resolution, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commissioon, Washington, DC 20555, telephone (301) 492–3934.

Draft NUREG–1401, NUREG/CR–4948, and NUREG/CR–5167 are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street NW. (Lower level), Washington, DC. A free single copy of Draft NUREG–1401, to the extent of supply, may be requested by writing to the Office of Information and Resources Management, Distribution Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of NUREG/CR–4948 and NUREG/CR–5167 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

Regulatory guides and NUREGs are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides and NUREGs (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555,

Attention: Director, Division of Information Support Services. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Authority: 5 U.S.C. 552(a).

Dated at Rockville, Maryland this 2 day of April, 1991.

For the Nuclear Regulatory Commission.

Warren Minners,

Director, Division of Safety Issue Resolution, Office of Nuclear Regulatory Research.

[FR Doc. 91-9232 Filed 4-18-91; 8:45 am]

BILLING CODE 7509-01-M

[Docket No. 50-322]

Long Island Lighting Co.; Notice of Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by the Long Island Lighting Company (LILCO), (licensee) for an amendment to Facility Operating License No. NPF-82, issued to the licensee for operation of the Shoreham Nulcear Power Station, Unit No. 1, located in Suffolk County, New York. Notice of Consideration of Issuance of this amendment was published in Newsday on November 21, 1990.

The purpose of the licensee's request was to allow LILCO to ship 137 fuel support castings and 12 peripheral pieces, equipment necessary for power operation, to the Low-Level Radioactive Waste Repository at Barnwell, South Carolina.

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by letter of April 12, 1991.

By May 20, 1991, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene may be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and to W. Taylor Reveley, III, Esq. Hunton and Williams, P.O. Box 1535, Richmond, Virginia, 23212, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment of November 8, 1990, and supplement of November 16, 1990, and (2) the Commission's letter to the licensee dated April 12, 1991.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, 20555, and at the local public document room at the Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 11786-9687. A Copy of Item (2) may be otained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Director, Division of Advanced Reactors and Special Projects.

Dated at Rockville, Maryland, this 12th day of April 1991.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors, Decommissioning and Environmental Project Directorate Division of Advanced Reactors and Special Projects Office of Nuclear Reactor Regulation.

[FR Doc. 91-9233 Filed 4-18-91; 8:45 am]

BILLING CODE 7590-01-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next meeting on Thursday, May 2, 1991, in room V of the Grand Hotel, 2350 M Street, NW., Washington, DC. The meeting will begin at 9 a.m.

ADDRESSES: The Commission is located at 2120 L Street, NW., in suite 510, Washington, DC. The telephone number is 202/653-7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, 202/653-7220.

SUPPLEMENTARY INFORMATION: At the meeting, the Commission will discuss its recommendations on setting the FY 1992 Volume Performance Standards and fee update, and the President's budget proposals. There will also be a session on physician payment under Medicaid.

Information about the exact agenda can be obtained on Friday, April 26, 1991. Copies of the agenda can be mailed at that time. Please direct all requests for the agenda to the Commission's receptionist.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 91-9242 Filed 4-18-91; 8:45 am]

BILLING CODE 6820-SE-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29078; International Series Release No. 260; File No. SR-CBOE-91-14]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Listing Index Warrants on the FT-SE Eurotrack 100 Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 28, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Rule 31.5(E) of the Exchange's Rules, the CBOE proposes to list and trade warrants based on the Financial Times-Stock Exchange Eurotrack 100 Index ("Eurotrack 100" or "Index"). The Index consists of 100 stocks from eleven European countries other than the United Kingdom.[1]

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has

[1] The CBOE also submitted a proposal to list and trade options based on the Eurotrack 100 Index. See File No. SR-CBOE-91-08.

prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Exchange Rule 31.5(E) sets forth guidelines applicable to listing index warrants based on established foreign and domestic stock indexes. The Exchange proposes to list index warrants based on the FT–SE Eurotrack 100 Index. The Eurotrack 100 is a capitalization-weighted stock index based on the prices of 100 stocks from 11 non-U.K. European countries traded on the International Stock Exchange of the United Kingdom and the Republic of Ireland ("ISE"),[2] an investment exchange recognized by the Securities and Investment Board ("SIB") of the U.K. All of the Index's component stocks are traded on the ISE by means of either the ISE's Stock Exchange Automated Quotation System ("SEAQ") or SEAQ International, electronic information and communications systems which provide competing market maker prices for securities traded over the system. The stocks in the Index from the Republic of Ireland are traded over SEAQ and the stocks in the Index from the other European countries are traded over SEAQ International. SEAQ's and SEAQ International's quotations of the stocks traded on the ISE are available to all exchanges listing those stocks. The system is solely that of the ISE and its dealers and does not reflect markets from the other exchanges.

Index Design. The Eurotrack 100 is designed and operated by the ISE. The Index is intended to represent a broad measure of the performance on the non-U.K. European stock market as a whole, as well as correlate with existing European indexes.

Index Construction and Calculation. To qualify for inclusion in the Index, a company must satisfy the following conditions: (1) There must be a firm quote for the stock on SEAQ or SEAQ International; (2) the market capitalization of the stock must represent at least 0.125% of the total market capitalization of continental European companies quoted on SEAQ International or SEAQ; (3) it must have at least 25% of its stock publicly held; and (4) it must be available for ownership by non-domestic investors. The largest companies in each of the constituent countries that meet the above criteria are then selected in order to reflect the relative market capitalizations of the European stock markets.

As of January 31, 1991, the weightings for each country included in the Index were: Germany, 25.1%; France, 23.1%; Netherlands, 13.1%; Switzerland, 12.1%; Italy, 9.1%; Spain, 6.8%; Belgium, 5.1%; Sweden, 3.7%; Ireland, 1.0%; Norway, .5%; and Denmark, .3%.

The Index is calculated by taking the summation of the product of the price of each constituent stock, converted into Deutschemarks, and the number of its shares outstanding and dividing this summation by the total market capitalization of the Index ("the Divisor") on the base date, October 26, 1990. On October 26, 1990, the value of the Index was 1000.00. The divisor is changed to reflect changes in individual constituent companies such as stock dividends.

The Index is updated each minute from 9:45 a.m. to 3:30 p.m. (London time) (3:45 a.m. to 9:30 a.m. Chicago time) using the mid-point of the best bid and best offer prices currently available for each component stock. The Index and the prices of its component stocks are disseminated in Europe and the U.S. by the ISE via market information vendors. Daily closing prices of the Index are available back to January 1, 1985, for the purpose of comparison with other indexes.

The Index will be reviewed on a quarterly basis by the Eurotrack Steering Committee. Eligible stocks with SEAQ International firm quotes and component securities whose prices or market capitalizations have fallen significantly will be inserted or deleted from the Index. If a stock obtains a firm quote on SEAQ International, or a non-index stock takes over a stock with a firm quote, and has more than 1.5% of the Index's total market capitalization, then it will enter the Index at the start of the next business day after it has joined SEAQ International, or following a stabilization period.

The Exchange proposes that the Index warrants will conform to the listing guidelines set forth in Exchange Rule 31.5(E) applicable to listing index warrants based on established foreign and domestic stock indexes. The guidelines provide that:

(1) The issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements in Rule 31.5(A);

(2) The term of the warrants shall be for a period ranging from one to five years from date of issuance; and

(3) The minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public shareholders, and shall have an aggregate market value of $4,000,000.

The Index warrants will be direct obligations of their issuer subject to cash-settlement in U.S. dollars and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the Index warrant expiration date (if not exercisable prior to such date), the holder of an Index warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Index has declined below a pre-stated cash settlement value. Conversely, holders of an Index warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the Index warrants would expire worthless.

The CBOE proposes to apply its regulatory framework for index warrants to Eurotrack 100 warrants. First, the suitability standards applicable to recommendations to customers of index warrants and transactions in customer accounts contained in Exchange Rule 30.50, Interpretation .02 would be applicable to recommendations regarding Eurotrack 100 Index warrants. This provision applies the options suitability standard contained in Exchange Rule 9.9 to recommendations regarding Eurotrack 100 warrants. Second, the Exchange proposes, consistent with Exchange Rule 30.50, Interpretation .02, the Eurotrack 100 warrants be sold only to options-approved accounts. Third, the CBOE proposes, consistent with Exchange Rule 30.50, Interpretation .03, that the standards of Exchange Rule 9.10(a) regarding discretionary options orders be applied to Index warrants. This provision requires a branch office manager or other Registered Options Principal to approve and initial a discretionary order in index warrants on the day entered. Fourth, the Exchange proposes that prior to the commencement of trading of Eurotrack 100 warrants, the CBOE will distribute a circular to its membership calling attention to specific risks associated with warrants on the FT–SE Eurotrack 100 Index. Finally, to ensure that there is an adequate mechanism for sharing surveillance information with respect to

[2] A list of the constituent companies in the Index can be obtained from the Office of the Secretary, CBOE and at the Commission.

the Index's component stocks, the Exchange is undertaking to establish an appropriate means to accomplish such information sharing.

(b) Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and with section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE believes that the proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above the should be submitted by May 10, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 15, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-9266 Filed 4-18-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29079; International Series Release No. 259; File No. SR-CBOE-91-13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Listing Index Warrants on the FT-SE Eurotrack 200 Index

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 28, 1991, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Rule 31.5(E) of the Exchange's Rules, the CBOE proposes to list and trade warrants based on the Financial Times-Stock Exchange Eurotrack 200 Index ("Eurotrack 200" or "Index"). The Index consists of 200 stocks from twelve European countries.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Exchange Rule 31.5(E) sets forth guidelines applicable to listing index warrants based on established foreign and domestic stocks indexes. The Exchange proposes to list index warrants based on the FT-SE Eurotrack 200 Index. The Eurotrack 200 is a capitalization-weighted stock index based on the prices of 200 stocks from 12 European countries traded on the International Stock Exchange of the United Kingdom ("U.K.") and the Republic of Ireland ("ISE"),[2] an investment exchange recognized by the Securities and Investment Board ("SIB") of the U.K. All of the Index's component stocks are traded on the ISE by means of either the ISE's Stock Exchange Automated Quotation System ("SEAQ") or SEAQ International, electronic information and communications systems which provide competing market maker prices for securities traded over the system. The stocks in the Index from the United Kingdom and the Republic of Ireland are traded over SEAQ and the stocks from the other European countries are traded over SEAQ International. SEAQ's and SEAQ International's quotations of the stocks traded on the ISE are available to all exchanges listing those stocks. The system is solely that of the ISE and its dealers and does not reflect markets from the other exchanges.

Index Design. The Eurotrack 200 is designed and operated by the ISE. The Index is intended to provide a broad measure of the performance of the European stock market as a whole, as well as correlate with existing European indexes.

Index Construction and Calculation. The Eurotrack 200 Index is derived from the Eurotrack 100 Index and the FT-SE 100 Index. The Eurotrack 100 is a capitalization-weighted index based on 100 stocks from 11 European countries other than the U.K.[3] The FT-SE 100 is an

[1] The CBOE also submitted a proposal to list and trade options based on the Eurotrack 200 Index. See File No. SR-CBOE-91-09.

[2] A list of the constituent companies in the Index can be obtained from the Office of the Secretary, CBOE and at the Commission.

[3] The Exchange has submitted a proposal to the Commission to trade options based on the Eurotrack 100 Index. See File No. SR-CBOE-91-08.

internationally-recognized, capitalization-weighted stock index based on the prices of 100 of the most highly capitalized British stocks traded on the ISE.[4] Both the Eurotrack 100 and FT–SE 100 Indexes have qualification standards that companies must meet in order to be included in each index. These standards are described in the Exchange's proposals to trade options on the respective indexes.

As of January 31, 1991, the weightings for each country included in the Index were: United Kingdom, 43.0%, Germany, 14.2%; France, 13.0%; Netherlands, 8.0%; Switzerland, 6.9%; Italy, 5.4%; Spain, 3.8%; Belgium, 2.9%; Sweden, 1.9%; Ireland, 6%; Norway, .3%; and Denmark, .2%. The Index is calculated by multiplying the price of each constituent stock, converted into European Currency Units ("ECUs"), by the number of shares outstanding. However, for the purpose of calculating the value of the Eurotrack 200 Index, the value of the stocks in the FT–SE 100 are reduced by a factor that reflects the comparative capitalization of the U.K. stock market and the stock markets of the other European countries included in the Index.[5] After making this adjustment for the FT–SE 100 stocks, the sum of the products of price times shares outstanding, across all stocks, is divided by the total market capitalization of the Index ("the divisor") on the base date, February 25, 1991. On February 25, 1991, the value of the Index was 1000.00. The divisor is changed to reflect changes in individual constituent companies such as stock dividends.

The Index is updated each minute from 9:45 a.m. to 3:30 p.m. (London time) 3:45 a.m. to 9:30 a.m. Chicago time) using the mid-point of the best bid and best offer prices currently available for each component stock. The Index and the prices of its component stocks are disseminated in Europe and the U.S. by the ISE via market information vendors.

The Exchange proposes that the Index warrants will conform to its listing guidelines set forth in Exchange Rule 31.5(E) applicable to listing index warrants based on established foreign and domestic stock indexes. The proposed guidelines provide that:

(1) The issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the size and earnings requirements in Rule 31.5(A);

(2) The term of the warrants shall be for a period ranging from one to five years from date of issuance; and

(3) The minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public shareholders, and shall have an aggregate market value of $4,000,000.

The Index warrants will be direct obligations of their issuer subject to cash-settlement in U.S. dollars and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the Index warrant expiration date (if not exercisable prior to such date), the holder of an Index warrant structured as a "put" would receive payment in U.S. dollars to the extent that the Index has declined below a pre-stated cash settlement value. Conversely, holders of an Index warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the Index warrants would expire worthless.

The CBOE proposes to apply its regulatory framework for index warrants to Eurotrack 200 warrants. First, the suitability standards applicable to recommendations to customers of Index warrants and transactions in customer accounts contained in Exchange Rule 30.50, Interpretation .02 would be applicable to recommendations regarding Eurotrack 200 Index warrants. This provision applies the options suitability standard contained in Exchange Rule 9.9 to recommendations regarding Eurotrack 200 warrants. Second, the Exchange proposes, consistent with Exchange Rule 30.50, Interpretation .02, that Eurotrack 200 warrants be sold only to options-approved accounts. Third, the CBOE proposes, consistent with Exchange Rule 30.50, Interpretation .03, that the standards of Exchange Rule 9.10(a) regarding discretionary options orders be applied to Index warrants. This provision requires a branch office manager or other Registered Options Principal to approve and initial a discretionary order in index warrants on the day entered. Fourth, the Exchange proposes that prior to the commencement of trading of Eurotrack 200 warrants, the CBOE will distribute a circular to its membership calling attention to specific risks associated with warrants on the FT–SE Eurotrack 200 Index. Finally, to ensure that there is an adequate mechanism for sharing surveillance information with respect to the Index's component stocks, the Exchange is undertaking to establish an appropriate means to accomplish such information sharing.

(b) Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and with section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE believes that the proposed rule change will impose no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5

[4] The Exchange has submitted a proposal to the Commission to trade options based on the FT–SE 100 Index. See File No. SR–CBOE–91–07.

[5] Currently, the FT–SE 100 stocks are reduced by a factor of .66678 when calculating the Eurotrack 200 Index.

U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 10, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 15, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-9270 Filed 4-18-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29077; File No. SR-MSE-90-15]

Self-Regulatory Organizations; Midwest Stock Exchange, Incorporated; Order Approving Proposed Rule Change Relating to Tie-in Provisions With Midwest Securities Trust Company and Midwest Clearing Corporation

April 12, 1991.

On October 15, 1990, the Midwest Stock Exchange, Incorporated ("MSE") filed a proposed rule change (File No. SR-MSE-90-15) with the Commission under section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the Federal Register on February 11, 1991.[2] No comments were received. This order approves the proposal.

I. Description of the Proposal

The proposed rule change will eliminate from MSE's rules certain language involving tie-in provisions with the Midwest Securities Trust Company ("MSTC") and Midwest Clearing Corporation ("MCC") with regard to transactions on the MSE trading floor. Generally, these tie-in provisions require that transactions executed on the MSE trading floor be serviced in some way by MCC and/or MSTC (*e.g.*, post-trade processing and depositary functions) or otherwise be subject to MCC and/or MSTC rules. The tie-in provisions that will be eliminated are contained in Articles VII and VIII of MSE's Constitution and in Articles I, VIII, XI, XII, XXI, XXII, XXV, XXVI, XXVII, and XXVIII of MSE's Rules. This proposal is intended to conform MSE rules to existing standards under the Act. The proposal also includes changes to MSE's Rules in which Rules 17, 18, and 19 of Article XXI of MSE's Rules will be redesignated, without change to the text itself, as Rules 14, 15, and 16 of Article IX of MSE's Rules.

II. MSE's Rationale for the Proposal

MSE states in the filing that by eliminating the tie-in provisions, the proposed rule change will conform MSE's rules more closely with the requirements of the Act, particularly sections 11A and 17A of the Act.[3]

III. Discussion

The Commission believes that this proposed rule change is consistent with the Act. Section 11A(c)(5) of the Act [4] provides that no national securities exchange may limit or condition the participation of any member in any registered clearing agency. Section 6(b)(5) of the Act [5] requires that the rules of a national securities exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, and settling securities transactions. Section 6(b)(8) of the Act [6] prohibit the rules of national securities exchanges from imposing any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. These sections of the Act complement section 17A(a)(2) of the Act,[7] which directs the Commission, having due regard for the maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents, to use its authority to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities.

Moreover, when adopting the Securities Acts Amendments of 1975 ("1975 Amendments"),[8] Congress charged the Commission with the obligation to eliminate barriers to competition that cannot be justified under the Act, especially where unnecessary restraints are imposed by SRO rules themselves.[9] Section 31(b) of the 1975 Amendments authorized the Commission to identify such rules and to require the SROs to rescind them.[10] In a 1976 release, the Commission stated that the historic role of clearing agencies as adjuncts to securities markets led to the development of SRO rules and procedures that imposed restraints on competition by tying the clearance and settlement of securities transactions to the market in which those transactions occur. As an example of such rules, the Commission stated that the rules of several national securities exchanges subjected securities contracts to the requirements of the by-laws and rules of clearing agencies affiliated with those exchanges.[11] Accordingly, at the Commission's request, many such rules have been rescinded by the SROs.[12]

The proposed changes to the Constitution and Rules of the MSE will eliminate the tie-in provisions to the MCC and MSTC regarding securities transactions on the MSE trading floor. These tie-in provisions relate to: (1) Post-trade processing, including the comparison, clearance, and settlement of securities transactions; and (2) depository requirements. As a result of the changes, MSE rules will conform more strictly to the cited provisions of sections 6, 11A, and 17A of the Act. Additionally, this rule change will update MSE Rules governing the practices and procedures for comparing transactions on its trading floor, particularly with regard to those rules governing MSE's automated execution procedures.

IV. Conclusion

For the reasons discussed in this order, the Commission finds that the proposal is consistent with the requirements of the Act, particularly section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (File No. SR-MSE-90-15) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-9268 Filed 4-18-91; 8:45 am]

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[1] 15 U.S.C. 78s(b).

[2] Securities Exchange Act Release No. 28848 (February 4, 1991), 56 FR 5435.

[3] 15 U.S.C. 78k-1 and 15 U.S.C. 78q-1.

[4] 15 U.S.C. 78k-1(c)(5).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(8).

[7] 15 U.S.C. 78q-1(a)(2).

[8] 89 Stat. 97, Pub. L. No. 94-29 (June 4, 1975).

[9] Senate Comm. on Banking, Housing, & Urban Affairs, Report to Accompany S. 249, No. 75, 94th Cong., 1st Sess. 12-14 (1975).

[10] 89 Stat. 97, 170.

[11] Securities Exchange Act Release No. 13027 (December 1, 1976), 41 FR 53557. See also *Bradford National Clearing Corp.* v. *Securities and Exchange Commission*, 590 F.2d 1035, notes 25 and 27 (D.C. Cir. 1978).

[12] *E.g.*, Securities Exchange Act Release No. 14636 (April 7, 1978), 43 FR 15819. This filing, a joint rule change by eight marketplaces, eliminated over 100 tie-in rules between the securities marketplaces and their affiliated clearing agencies.

[13] 17 C.F.R. 200.30-3(a)(12).

[Release No. 34-29072; File No. SR-NASD-91-14]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Small Order Execution System Tier Size Classifications

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 8, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization under section 19(b)(3)(A)(i) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing an interpretation of an existing rule, pertaining to the Association's periodic reclassification of securities in the appropriate Small Order Execution System ("SOES") maximum order size tiers.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of an basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the rule change is to notify the Commission of the reclassification of some 417 National Market System securities within the maximum SOES order size tier levels. The Association reviews the tier levels applicable to each security periodically (approximately every six months) to determine if the trading characteristics of the issue have changed so as to warrant a SOES tier level move. Such a review was conducted as of December 31, 1990, using fourth quarter, 1990 trading data and the established criteria:

A 1,000-share maximum order size for Nasdaq/NMS securities with an average daily nonblock volume of 3,000 shares or more a day, a bid price less than or equal to $100, and three or more market makers;

A 500-share maximum order size for Nasdaq/NMS securities with an average daily nonblock volune of $1,000, shares or more a day, a bid price less than or equal to $150, and two or more market makers;

A 200-share maximum order size for Nasdaq/NMS securities with an average daily nonblock volume of less than 1,000 shares a day, a bid price less than or equal to $250, and less than two market makers.

The 417 Nasdaq/NMS securities that have been reclassified as of April 15, 1991, are set out in the NASD's *Notice To Members 91-22.*

The NASD believes that the proposed rule change is consistent with section 15A(b)(6) of the Act. Section 15A(b)(6) requires, among other things, that the rulemaking initiatives of the NASD be designed to "foster cooperation and coordination with person engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanism of a free and open market." The NASD believes that the reassessment of securities with SOES tier levels will further these ends by providing an efficient mechanism to facilitate small order executions in the Nasdaq market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to file number SR-NASD-91-14 and should be submitted by May 10, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: April 12, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-9269 Filed 4-18-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29070; File No. SR-NASD-90-69]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Limitation of Asset-Based Sales Charges as Imposed by Investment Companies

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 28, 1990, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items

have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD has proposed an amendment to Article III, section 26 of the Rules of Fair Practice to amend the NASD mutual fund maximum sales charge rule to limit asset-based sales charges in accordance with the provisions of the rule. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are bracketed.

Investment Companies

Section 26

* * * * *

Definitions

(b)

(1)–(3) No change.

(4) *Person* ["Any person"] shall mean "*person*" ["any person"] as defined in [subsection (a), or "purchaser" as defined in subsection (b), of Rule 22d–1 under] the Investment Company Act of 1940.

(5)–(7) No change

(8) "Sales charge" and "sales charges" as used in subsection (d) of this section shall mean all charges or fees that are paid to finance sales or sales promotion expenses, including front-end, deferred and asset-based sales charges, excluding charges and fees for ministerial, recordkeeping or administrative activities, and investment management fees. For purposes of this section, members may rely on the sales-related fees and charges disclosed in the prospectus of an investment company.

(A) A "front-end sales charge" is a sales charge that is included in the public offering price of the shares of an investment company.

(B) A "deferred sales charge" is a sales charge that is deducted from the proceeds of the redemption of shares by an investor, excluding any such charges that are (i) nominal and are for services in connection with a redemption or (ii) to discourage short-term trading, that are not used to finance sales-related expenses, and that are credited to the net-assets of the investment company.

(C) An "asset-based sales charge" is a sales charge that is deducted from the net assets of an investment company and does not include a service fee.

(9) "Service fees" as used in subsection (d) of this section shall mean payments by an investment company for personal service and/or the maintenance of shareholder accounts.

(10) "Prime rate" as used in subsection (d) of this section shall mean the most preferential interest rate on corporate loans at large U.S. money center commercial banks.

* * * * *

Sales Charges

(d) No member shall offer or sell the shares of any open-end investment company or any "single payment" investment plan issued by a unit investment trust (*collectively "investment companies"*) registered under the Investment Company Act of 1940 *if the sales charges described in the prospectus are excessive.* [if the public offering price includes a sales charge which is excessive, taking into consideration all relevant circumstances.] *Aggregate* [S]sales charges shall be deemed excessive if they do not conform to the following provisions:

(1) Investment Companies Without an Asset-Based Sales Charge

[(1)] *(A) Front-end and/or deferred sales charges described in the prospectus which may be imposed by an investment company without an asset-based sales charge* [The maximum sales charge on any transaction] shall not exceed 8.5% of the offering price].

[(2)(A)] *(B)* (i) Dividend reinvestment *may* [shall] be made available at net asset value per share to any person who requests such reinvestment. [at least ten days prior to the record date subject only to the right to limit the availability of dividend reinvestment to holders of securities of a stated minimum value, not greater that $1,200.]

[(B)] *(ii)* If dividend reinvestment is not made available as specified [on terms at least as favorable as those] in subparagraph *(B)(i)* [(2)(A)], the maximum *aggregate* sales charge [on any transaction] shall not exceed 7.25% of the offering price.

[(3)(A)] *(C) (i)* Rights of accumulation (cumulative quantity discounts) *may* [shall] be made available to any person [for a period of not less than 10 years from the date of first purchase] in accordance with one of the alternative quantity discount schedules provided in subparagraph *(D)(i)* [(4)(A)] below, as in effect on the date the right is exercised.

[(B)] *(ii)* If rights of accumulation are not made available on terms at least as favorable as those specified in subparagraph *(C)(i)* [(3)(A)] the maximum *aggregate* sales charge [on any transaction] shall not exceed:

[(i)] *(a)* 8% of offering price if the provisions of subparagraph *(B)(i)* [(2)(A)] are met; or

[(ii)] *(b)* 6.75% of offering price if the provisions of subparagraph *(B)(i)* [(2)(A)] are not met.

[(4)(A)] *(D) (i)* Quantity discounts, if offered, shall be made available on single purchases by any person in accordance with one of the following two alternatives:

[(i)] *(a)* A maximum *aggregate* sales charge of 7.75% on purchases of $10,000 or more and a maximum *aggregate* sales charge of 6.25% on purchases of $25,000 or more, or *(b)* A maximum *aggregate* sales charge of 7.50% on purchases of $15,000 or more and a maximum *aggregate* sales charge of 6.25% on purchases of $25,000 or more.

[(B)] *(ii)* If quantity discounts are not made available on terms at least as favorable as those specified in subparagraph *(D)(i)* [(4)(A)] the maximum *aggregate* sales charge [on any transaction] shall not exceed:

[(i)] *(a)* 7.75% of the offering price if the provisions of subparagraphs *(B)(i) and (C)(i)* [(2)(A) and (3)(A)] are met.

[(ii)] *(b)* 7.25% of the offering price if the provisions of subparagraph *(B)(i)* [(2)(A)] are met but the provisions of subparagraph *(C)(i)* [(3)(A)] are not met.

[(iii)] *(c)* 6.50% of the offering price if the provisions of subparagraph *(C)(i)* [(3)(A)] are met but the provisions of subparagraph *(B)(i)* [(2)(A)] are not met.

[(iv)] *(d)* 6.25% of the offering price if the provisions of subparagraphs *(B)(i) and (C)(i)* [(2)(A) and (3)(A)] are not met.

(E) If an investment company without an asset-based sales charge pays a service fee, the maximum aggregate sales charge shall not exceed 7.25% of the offering price.

(F) If an investment company without an asset-based sales charge reinvests dividends at offering price, it shall not offer or pay a service fee unless it offers quantity discounts and rights of accumulation and the maximum aggregate sales charge does not exceed 6.25% of the offering price.

(2) Investment Companies With an Asset-Based Sales Charge

(A) Except as provided in subparagraphs (2)(C) and (2)(D), the aggregate asset-based, front-end and deferred sales charges described in the prospectus which may be imposed by an investment company with an asset-based sales charge, if the investment company has adopted a plan under which service fees are paid, shall not exceed 6.25% of total new gross sales (excluding sales from the reinvestment of distributions and exchanges of shares between investment companies in a single complex, between classes of shares of an investment company with multiple classes of shares or between series shares of a series investment company) plus interest charges on such amount equal to the prime rate plus one percent per annum. The maximum front-end or deferred sales charge resulting from any transaction shall be 6.25% of the amount invested.

(B) Except as provided in subparagraphs (2)(C) and (2)(D), if an investment company with an asset-based sales charge does not pay a service fee, the aggregate asset-based, front-end and deferred sales charges described in the prospectus shall not exceed 7.25% of total new gross sales (excluding sales from the reinvestment of distributions and exchanges of shares between investment companies in a single complex, between classes of shares of an investment company with multiple classes of shares or between series shares of a series investment company) plus interest charges on such amount equal to the prime rate plus one percent per annum. The maximum front-end or deferred sales charge resulting from any transaction shall be 7.25% of the amount invested.

(C) The maximum aggregate sales charge on total new gross sales set forth in subparagraphs (2) (A) and (B) may be increased by an amount calculated by applying the appropriate percentages of 6.25% or 7.25% to total new gross sales which occurred after an investment company first adopted an asset-based sales charge until the (effective date of this amendment) plus interest charges on such amount equal to the prime rate plus one percent per annum less

any front-end, asset-based or deferred sales charges on such sales or net assets resulting from such sales.

(D) The maximum aggregate sales charges of an investment company in a single complex, a class of shares issued by an investment company with multiple classes of shares or a separate series of a series investment company, may be increased to include sales of exchanges shares provided that such increase is deducted from the maximum aggregate sales charges of the investment company, class or series which redeemed the shares for the purpose of such exchanges.

(E) No member shall offer or sell the shares of an investment company with an asset-based sales charge if:

(i) The amount of the asset-based sales charge exceeds .75 of 1% per annum of the average annual net assets of the investment company, or

(ii) Any deferred sales charges deducted from the proceeds of a redemption after the maximum cap described in subparagraphs (2) (A), (B), (C) and (D) has been attained are not credited to the investment company.

(3) No member or person associated with a member shall, either orally or in writing, describe an investment company as being "no load" or as having "no sales charge" if the investment company has a front-end or deferred sales charge or whose total charges against net assets to provide for sales-related expenses and/or service fees exceed .25 of 1% of average net assets per annum.

(4) No member or person associated with a member shall offer or sell the securities of an investment company with an asset-based sales charge unless its prospectus discloses that long-term shareholders may pay more than the economic equivalent of the maximum front-end sales charges permitted by this section. Such disclosure shall be adjacent to the fee table in the front section of a prospectus.

(5) No member or person associated with a member shall offer or sell the securities of an investment company if the service fees paid by the investment company, as disclosed in the prospectus, exceed .25 of 1% of its average annual net assets or if a service fee paid by the investment company, as disclosed in the prospectus, to any person who sells its shares exceeds .25 of 1% of the average annual net asset value of such shares.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis For, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposal Rule Change

(a) In 1970, Congress amended the Investment Company Act of 1940 ("1940 Act"), specifically section 22(b), modifying the NASD's authority concerning sales charges by giving it broad power to prohibit excessive sales charges on mutual fund shares offered by NASD members to investors. In 1976, prior to the introduction of contingent deferred or asset-based sales charges, the NASD proposed and, with Commission approval, adopted amendments to Article III, section 26 to the NASD Rules of Fair Practice to impose a limitation on the maximum sales charge permitted as a front-end sales load. Since then, the maximum rule has been applied to contingent deferred sales charges, but not to asset-based sales charges. The current rule limits the maximum front-end sales charge to not more than 8.5 percent of the offering price of the mutual fund shares and is scaled down in steps to 6.25 percent if one or more of the following benefits are not offered: Dividends reinvested at net asset value, quantity discounts, and rights of accumulation. The current rule is hereinafter referred to as the "maximum sales charge rule."

The NASD is proposing to revise the maximum sales charge rule by amending subsections (b) and (d) of Article III, section 26 of the NASD Rules of Fair Practice to subject asset-based sales charges in connection with the sale of mutual fund shares to NASD regulation. The NASD's main objective of applying the maximum sales charge rule to asset-based sales charges is to comply with the Congressional mandate that it prevent excessive sales charges on mutual fund shares. The proposed rule change aims to achieve this by subjecting all charges for sales related expenses, no matter how they are charged, to the same limitations. Under the proposed revisions to the maximum sales charge rule, the NASD believes that NASD members who distribute mutual fund shares will not be prevented from continuing to receive reasonable compensation for selling mutual fund shares and for providing service to investors after the sale.

Because sales charges may be assessed in different ways, it is important to assure a level playing field among those selling mutual fund shares in order to avoid circumvention of the maximum sales charge rule. It is, therefore, the intention of the NASD to revise the maximum sales charge rule to require all compensation structures of mutual funds to be analyzed in a manner which will measure each plan relative to other plans. In developing the proposed rule change, the NASD searched for the most appropriate method to achieve this balance, referred to as "approximate economic equivalency." The following variables were taken into consideration by the NASD in its efforts to establish approximate economic equivalency: the percentage amount of an asset-based charge on fluctuating net assets, the interest charge on liability incurred by an underwriter that pre-pays and amortizes sales expenses, the length of time that shareholders own shares, and the frequency and amount of sales charges received on redemption.

(b) The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, which requires that the Association adopt and amend its rules to promote just and equitable principles of trade, foster cooperation and coordination with regulators, and generally provide for the protection of the investors and the public interest inasmuch as the proposed rule change is designed to uniformly regulate all sales charges imposed by investment companies, no matter how they are charged, in order to ensure approximate equivalence amongst the different types of funds economically. In addition, the NASD believes that the proposed rule change will assist it in meeting its obligation, under the 1940 Act Congressional mandate, to prevent excessive sales charges on mutual fund shares sold to the public by NASD members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The proposed rule change was published for comment in Special Notice to Members 90-26 (April 16, 1990). 57 comments were received in response thereto. Of the 57 comment letters received, 29 were in favor of the proposed rule change, 19 were opposed, and 9 offered specific comments but expressed no opinion as to whether the commentor supported or opposed the proposed rule change generally. Below

are discussions of the major issues raised by commentors.

Method of Calculating the Total Sales Charges

Two different accounting approaches may be used to calculate the aggregate sales charges in order to assure approximate economic equivalency: fund-level and individual shareholder. Fund-level accounting protects a majority of shareholders by requiring that all sales charges terminate when a percentage of gross sales is reached, but may result in a minority of long-term shareholders paying more than the maximum sales charge. Individual shareholder accounting, although resulting in the guarantee that no mutual fund shareholder will pay more sales charges than the maximum limit, requires separate tabulation of all charges paid by each shareholder. Four commentors specifically favored individual shareholder accounting over the NASD-proposed approach, fund-level accounting.

The NASD has considered these comments and determined that fund-level accounting, in conjunction with a requirement that the risk of paying more than the economic equivalent be prominently disclosed in the fund's prospectus, is the best alternative as a minimum standard at this time. Fund-level accounting is economically feasible for most funds, would require minimal additional recordkeeping procedures, and can be implemented within one year of the Commission's approval. Individual shareholder accounting, in comparison, imposes a far greater burden in terms of time needed to implement the changes, ease of analysis, complexity of procedures and overall cost of implementation. Requiring the individual shareholder accounting method would mandate extensive and expensive changes in the recordkeeping methods and procedures utilized by mutual funds, would disrupt current processing of sales and redemptions, and would take several years for the industry to achieve. As a practical matter, fund-level accounting would provide considerable flexibility to the industry in financing sales-related expenses while ensuring that most investors in mutual funds, regardless of the method in which sales charges are assessed, would pay no more for the expenses incurred for distribution than the current NASD rule permits for front-end sales loads.

Individual shareholder accounting would, of course, be permitted under the proposed rule change and it is encouraged. It is the NASD's intention that fund-level accounting be required at a minimum, thereby not precluding the use of more protective methods. A fund, based upon its particular circumstances and economic perspective, may choose the option of individual shareholder accounting. Furthermore, the industry as a whole would not be prevented from moving toward the adoption of an individual shareholder accounting standard in the future.

Management Fees

Although the original proposal published in Special Notice to Members 90–26 (April 16, 1990) ("original proposal") for comment contained no specific provision with regard to management fees, the Special Notice contained a statement within the Explanation Section which indicated that the portion of management fees used for sales-related activities should be included in the calculation of sales charges under subsection (b)(8). Several comments were received expressing general concern regarding this statement. The original proposal would have placed the burden on NASD members to determine the proportion of investment management fees which are used directly or indirectly for sales. The members commented that the burden of determining the breakdown of the management fees should not be imposed upon members and that members ought to be permitted to rely on the figures disclosed in the prospectus as accurate.

Upon review, the NASD acknowledges that investment management fees and profits are not subject to the jurisdiction of the Association. Consequently, members will not be required to verify whether such fees or profits are being used, directly or indirectly, to finance sales-related expenses. In accordance with the rule change proposed herein, members will be able to rely on disclosures in prospectuses for informtion about sales-related fees and charges. Subparagraph (b)(8) of the Definitions section has been amended to exclude management fees from the definition of sales charges.

Service Fees

Several commentors considered the definition of service fees in the proposal at subsection (b)(9) to be either too narrow or inadequately defined. For example, it does not cover payments of service fees to non-members such as banks or foreign broker/dealers. In addition, it was questioned as to whether asset-based sales charges were service fees and, if so, it was recommended that they not be classified as the same. The definition of service fees at subparagraph (b)(9) has been broadened to permit service fees to be used for a wide variety of services provided by members and other entities to mutual fund shareholders and are defined in subsection (b)(9) to not include transfer agent or custodian fees paid by mutual funds. Subparagraph (b)(8)(C) has also been amended to define more clearly the distinction between "sales charge" and "service fees" in the proposal. However, it was decided not to use the term "maintenance fee" in lieu of "service fee," as recommended by some commentors, because, in the NASD's view, it lacks the connotation of personal service that the Association wishes to encourage.

The service fee, as defined in subsection (b)(9), is restricted in various subparagraphs of subsection 26(d) to a limit of not more than .25 of 1% per annum of the average annual net assets of an investment company. This could mean that some members might receive more than .25 of 1% per annum of a mutual fund's assets for which they were responsible while others might receive less, with the total amount paid to all members restricted to no more than the maximum percentage of the total net assets permitted. The NASD asserts that the maximum percentage permitted should apply to all recipients and has amended the proposal to relate the maximum percentage of .25 of 1% per annum to shares sold by any person. Thus, if the proposal is approved, a recipient would be able to receive a service fee of not more than .25 of 1% per annum of the average annual net asset value of the shares it sold to customers. New section (d)(5) has been added to accomplish this.

In the original proposal, subparagraph (d)(1)(F) would not have permitted a mutual fund without an asset-based sales charge that reinvests dividends at the offering price to pay a service fee. It was determined that such a prohibition should not apply. Accordingly, the NASD has amended the subparagraph to permit such a service fee in this case if the maximum aggregate sales charge does not exceed 6.25% of the offering price.

In addition, comments were made suggesting that service fees which do not provide for any sales functions should not be regulated and that service fees should not be presumed to be asset-based sales charges. Other commentors suggested that the service fee limitations should be less restricitive and suggested a sliding, increasing scale of service fees with appropriate reductions to the maximum sales charge limitations of 7.25% or 6.25% of gross new sales. Still

others contended that if a mutual fund did not offer the maximum service fee of .25 of 1% per annum of a fund's net asset value, the excess should be permitted to be added to the maximum asset-based sales charge of .75 of 1%, or that excess service fees should be permitted to be paid so long as the amount paid is counted within the limitation of the annual and aggregate caps. A few other commentors argued that some or all of the maximum limitations should be less stringent.

Notwithstanding the comments, it has been concluded that the maximum asset-based sales charge of .75 of 1% per annum of average net assets proposed in subsection (d)(2)(E) and the maximum service fee of .25 of 1% of a fund's average annual net assets proposed in subsections (d)(5) are adequate to finance sales related expenses and to provide compensation for continued service to mutual fund shareholder accounts. In addition, the Association does not wish to add further complexity to an already complex rule.

Maximum Front-End and Deferred Sales Charges

Subsection (d)(2) of the proposal deals with mutual funds that have an asset-based sales charge. Many of such companies also have front-end and/or deferred sales charges. According to the original proposal, the maximum sales charge limitations in subparagraphs (d)(2)(A) and (d)(2)(B) are a percentage of total new gross sales instead of the individual sale total. Under the original proposal, it is possible to construct a scenario whereby some investors who make large investments might pay a minimal front-end sales charge and other investors might be required to pay a very high sales charge per individual transaction even though the overall sales charges related to the net assets of the fund are within the required maximum percentages. For example, a person investing $1 million might have to pay no front-end sales charge, whereas a person investing $10,000 might have to pay an excessive front-end sales charge even though the aggregate sales charges by the fund were within the maximum percentages of total new gross sales permitted by the proposal. Therefore, both subparagraphs have been amended to set maximum front-end and/or deferred sales charges per individual transaction.

Exchanges of Mutual Fund Shares

A number of commentors asked for additional information regarding how exchanges of shares between investment companies in the same complex, between investment companies with multiple classes of securities and between different series of a series investment company, should be treated. Questions were raised as to whether the maximum aggregate sales charges of an investment company in these categories may be increased to include sales of shares pursuant to exchanges, provided that such increase is deducted from the aggregate sales charges of the redeeming investment company, class or series. The NASD considers that such exchanges should not be treated as new sales primarily because the extensive record-keeping that would otherwise be required would be an expensive and difficult burden for many mutual funds. However, if a mutual fund wishes to keep such records, the practice will be permitted provided that the increase in the maximum aggregate sales charges for the receiving mutual fund is deducted from the maximum aggregate sales charges of the redeeming company. Subparagraphs (d)(2) (A) and (B) have been amended and new subparagraph (d)(2)(D) has been added to achieve this.

Some commentors requested clarification as to whether aggregate and annual ceilings imposed in Subsection (d) should be computed on a class or series basis, whether exchanges should be excluded from total new gross sales, and recommended that the proposal be amended to state how the maximum sales charge limitations should be applied when an investment company has multiple classes of shares or is a series investment company. The NASD disagrees. Each class of shares and each series are a separate investment company for purposes of the sales charge rule and that the limitations will apply to each class and each series and not to the investment company as a whole. The NASD has always applied its rules governing investment companies in this way and sees no reason to further amend the proposed rule change.

Treatment of Prior Sales and Unreimbursed Expenses

Several commentors remarked that the proposal does not deal adequately with unreimbursed sales-related expenses incurred in the past that would be amortized by asset-based and/or deferred sales charges after the rule change is adopted. They also pointed out that there is no provision for interest payments of the financing necessary to fund such expenses.

A new subparagraph (d)(2)(C) has been added to the original proposal that would increase the maximum permitted sales charges for sales made from the time the mutual fund first adopted the asset-based sales charge until the effective date of the proposed rule change. In addition, an interest rate of prime plus 1% per annum would be added to the amount so calculated and the total would be reduced by any front-end, asset-based and deferred sales charges received prior to the effective date of the proposed rule change as a result of such sales. The net total would be added to the maximum aggregate sales charges on new gross sales calculated as described in subparagraphs (d)(2) (A) and (B). The grand total would be continually reduced by sales charges received by the investment company after the effective date of the proposed rule change. Finally, the interest rate of the prime rate plus 1% per annum would be applied to the fluctuating grand total over time, as required by subsections (d)(2) (A) and (B).

"No Load" Designation

The original proposal, at subparagraph (d)(3), prohibited members of their associated persons from describing an investment company with a deferred or an asset-based sales charge as "no load." Some commentors questioned the definition of "no load" given the fact that front-end load funds were not discussed in this subsection of the original proposal and that, as a result, the original proposal could have potentially discriminatory effects on "no load" funds. The NASD agrees that this prohibition should apply to mutual funds that have front-end or deferred sales charges.

In addition, a few commentors recommended that an exception be created for funds with a combined asset-based sales charge and service fee of less than .25 of 1% of a fund's average annual net assets. Therefore, subparagraph (d)(3) has been amended to apply to funds that have asset-based and/or service fees that together exceed .25 of 1% of a fund's average annual net assets thereby reducing the potentially discriminatory effects.

Tax Question

Some commentors believe that the requirement in subparagraph (d)(2)(E)(ii) of the original proposal that excess deferred sales charges be credited to the net assets of an investment company may imperil a mutual fund's status as a regulated investment company under the provisions of the Internal Revenue Code. As suggested, the term "net assets" has been excised to avoid this occurrence. The NASD does not wish to adversely affect the tax status of mutual funds by any provision of the rule and is

continuing to study this area. If necessary, appropriate changes will be made at a later date.

Non-Conforming Mutual Funds—Procedures for Exemption

Some commentors suggested that the NASD adopt procedures for the review and approval of sales charge structures that do not conform to the provisions of the proposal. Moreover, two commentors suggested that the proposal could discourage innovation within the industry. The NASD has determined at this time to defer consideration of exemptive provisions until a later date. It believes that the provisions of the proposed rule change will provide ample scope for innovation in the financing of sales related expenses of mutual funds.

However, the Association would be willing, in view of the importance of the proposed rule change to the mutual fund industry and the fact that the NASD has yet to experience the effect of its implementation, to consider whether any changes are necessary after the NASD has had one year's experience in administering the new provisions.

General Comments

Definition of "Person". In the original proposal the term "investor" was used in lieu of the term "person." Commentors noted that an adequate definition of a person is contained in the Investment Company Act of 1940 and this definition has been added to subparagraph (b)(4) of the Definitions section. "Investor" has therefore been changed to "person" throughout the rule change as proposed herein.

Market Forces Should Be Allowed to Control Competition. Five comments were received from commentors that believed that the market should be left to regulate itself through competitive strategies, that one should not fix something which is not broken, and that maximums are enough of a regulatory force to alleviate the need for annual and aggregate maximum limitations on sales charges. An additional twelve comments were received emphasizing the negative impact this type of regulation may have on member firms, such as discouraging registered representatives from continuing to service customers, discriminating against small broker-dealers, and increasing administrative costs. After considering these comments, the NASD determined that most comments were without merit, and those with merit were outweighed by the advantages that the proposed rule change will bring to the industry and particularly to investors, most of whom will not pay more under the proposed rule change than the maximum sales charge that is permitted under the current sales charge rule.

Technical Amendments

In addition to the changes described above that have been made to the original proposal, a number of technical changes have been made to generally clarify certain terms and to ensure uniformity in the language used in response to comments received. One such technical amendment is the postponement of the effective date until one year after SEC approval.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comment

Interested persons are invited to submit written data, views, and arguments concerning the filing. The Commission invites comment on all issues presented. In particular, the Commission notes that the NASD proposal would permit funds that charge up to 0.25% of average net assets for sales related expenses or account maintenance fees to designate themselves as "no-load" funds. The Commission's 1988 release proposing amendments to rule 12b–1 under the Investment Company Act included a provision that would prohibit the use of no-load terminology by all funds that have adopted 12b–1 plans.[1] The Release stated the Investment Company Act does not provide a *de minimis* exception from the definition of sales load and that investors might be misled by such a label. The Commission specifically requests comment on the consequences of use of the "no load" designation by funds that assess a charge on assets to finance sales activities.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to file number SR–NASD–90–69 and should be submitted by May 10, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: April 12, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–9278 Filed 4–18–91; 8:45 am]

BILLING CODE 8010–01–M

[1] See Investment Company Act Release No. 16431 (June 13, 1988), 53 FR 23258 (June 21, 1988).

[Release No. 34–29081; File No. SR–OCC–91–05]

Self-Regulatory Organizations; The Options Clearing Corporation; Proposed Rule Change Relating to Index Participations

April 12, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 29, 1991, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would reactivate OCC's rules relating to Index Participations ("IPs") and make changes to OCC's rules conforming to the changes proposed by the Philadelphia Stock Exchange, Inc. ("PHLX") and the American Stock Exchange, Inc. ("AMEX") to their respective IP rules.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. General Purpose

The general purpose of the proposed rule change is to obtain Commission reapproval of OCC's rules relating to IPs so that OCC can issue, guarantee, clear and settle IPs to be traded on PHLX following Commission approval of File No. SR–PHLX–89–48 and on AMEX following Commission approval of File No. SR–AMEX–90–28. OCC originally proposed rules rleating to IPs in File No. SR–OCC–88–2, which the Commission approved on April 11, 1989. (See Securities Exchange Act Release No. 26713 (April 11, 1989), 54 FR 15575.) That order was subsequently set aside—together with the order in which the Commission approved the proposed rule changes relating to IPs filed by PHLX, AMEX and the Chicago Board Options Exchange, Inc. ("CBOE")—by the United States Court of Appeals for the Seventh Circuit in *Chicago Mercantile Exchange* v. *SEC*, 883 F. 2d 537 (7th Cir. 1989), *cert. denied* 110 S. Ct. 3214 (1990) ("*CME* v. *SEC*"). OCC described the general purpose of its IP rules in File No. SR–OCC–88–2, and that description is not repeated in this rule filing.

In addition, the proposed rule change makes certain changes to OCC's IP rules to accommodate the changes proposed by PHLX and AMEX to their respective IP products in their respective filings.

2. Particular Changes Proposed to OCC's Rules

(a) *Change in time of valuation of IPs traded on PHLX.* PHLX has proposed in File No. SR–PHLX–89–48 that the "settlement index value" for IPs traded on that Exchange as to which the cash-out privilege has been exercised be calculated as of the close of trading on the day on which the exercise notice is submitted to OCC. (PHLX's rules formerly provided that the settlement index value would be determined either as of the opening of trading on the business day following the exercise, if the exercise notice was tendered to OCC on the business day before a dividend equivalent day, or as of the close of trading on the business day following the exercise, if the exercise notice was tendered to OCC on any other business day.) OCC will therefore be able to be informed of the settlement index value during the night after the exercise, in time to perform the calculations and issue the reports necessary for settlement by the next morning. The exercise settlement date of an exercise of IPs traded on PHLX will therefore be the business day following the date on which the exercise notice is properly tendered to OCC. OCC's Rule 1906(a) is amended, and a new Interpretation .01 is added to the Rule, to reflect these changes.

PHLX has provided in File No. SR–PHLX–89–48 for an exercise cut-off time applicable to its members that is earlier than the cut-off time specified in OCC's Rule 1903. As is true for options, an IP exercise notice tendered to OCC in accordance with OCC's Rules would be valid and binding on OCC whether or not the Clearing Member that tendered the notice was in compliance with any earlier cut-off time imposed by PHLX.

(b) *Exercise of the cash-out privilege of IPs traded on Amex on any business day.* AMEX has proposed in File No. SR–AMEX–90–28 to permit the cash-out privilege of IPs traded on it to be exercised on any business day, instead of on one day in each calendar quarter as AMEX's rules previously specified. Interpretation .04 to OCC's Rule 1903 is amended to reflect this change. AMEX has also proposed, in Amendment No. 2 to File No. SR–AMEX–90–28, that the settlement index value of IPs as to which the cash-out privilege has been exercised shall be calculated as of the opening of trading on the trading day following the day of exercise. OCC will therefore not be informed of the settlement index value until after the opening on that day, and will perform the calculations and issue the reports necessary for settlement on the next morning, *i.e.*, the morning of the second business day following the date on which the exercise notice is properly tendered to OCC. The exercise settlement date of an exercise of IPs traded on Amex will therefore be the second business day following the date on which the exercise notice is properly tendered to OCC. OCC's Rule 1906(a) is amended, and a new Interpretation .02 is added to the Rule, to reflect these changes.

(c) *Payment of accrued dividend equivalent to exercising holders and by assigned writers.* Both PHLX and AMEX have proposed to change the divident equivalent feature of their respective IP products so that IP holders exercising the cash-out privilege on any day will be entitled to receive, and writers to whom the exercises are assigned will be obligated to pay, the dividend equivalent. Both PHLX and AMEX continue to provide that all holders of IPs will be entitled to receive, and all writers of IPs will be obligated to pay, the dividend equivalent on each dividend equivalent day, *i.e.*, on a day in each calendar quarter so identified by the Exchange. (The dividend equivalent takes into account the dividend for each component security in the index underlying a particular class of IPs, adjusted to reflect the relative weight of the security in the index, on the ex-dividend date for the security. PHLX and AMEX will be responsible for calculating and reporting to OCC the dividend equivalent relating to each of their respective classes of IPs.) The effect of providing that an IP holder receives the dividend equivalent upon exercise will be to assure that the holder incurs no financial penalty for choosing to exercise the cash-out privilege at any time during a calendar quarter rather than to wait until the next dividend equivalent day. Amendments are made to OCC's Rule 1902 and to the definitions of "dividend equivalent day" and "dividend equivalent," in paragraphs (g) and (h), respectively, of Article XVIII, Section 1 of OCC's By-Laws to implement this change. Conforming changes are made to other OCC By-Laws.

(d) *Other changes to OCC's rules and by-laws.* Miscellaneous other changes are proposed to OCC's Rules and By-Laws. These changes include changes to OCC's margin rules to incorporate references to IPs, and to OCC's provisions applicable to late filing, revocation and modification of IP exercise notices to conform OCC's provisions for IPs to the revised provisions applicable to options proposed in File No. SR–OCC–90–3. The Changes with respect to filing, revocation and modification of IP exercise notices are to be treated as part of the proposed rule change only if File No. SR–OCC–90–3 is approved before the proposed rule change relating to IPs is.

3. Supplemental Agreement

OCC submitted a form of "Supplemental Agreement" to the Commission as an Exhibit to its original

IP filing. That Supplemental Agreement was subsequently executed by OCC, PHLX, AMEX, and CBOE and dated April 14, 1989, and is hereinafter referred to as the "1989 Supplemental Agreement." The 1989 Supplemental Agreement supplemented the Restated Participant Exchange Agreement (the "RPEA"), in that it governed the same aspects of the relationship between OCC and its Participant Exchanges with respect to IPs that the RPEA governs between OCC and the Participant Exchanges with respect to options.

Section 23 of the 1989 Supplemental Agreement contained a provision stating that the 1989 Supplemental Agreement would terminate as to any IP Participating Exchange in the event that the Exchange ceased to have effective IPs Rules. OCC believes that the decision of the Court of Appeals in *CME* v. *SEC* had the effect of causing all three Exchanges that were parties to the 1989 Supplemental Agreement to cease to have effective IPs Rules, and accordingly OCC believes that the 1989 Supplemental Agreement terminated with respect to all three Exchanges as of the date of that decision.

OCC is therefore asking PHLX and AMEX to execute a new Supplemental Agreement (the "1991 Supplemental Agreement"), in the form attached as an Exhibit to the proposed rule change, to replace the 1989 Supplemental Agreement. (CBOE has not sought to reactivate its IP trading program, and accordingly would not initially be a party to the 1991 Supplemental Agreement. However, CBOE, or any other Exchange that is a party to the RPEA, could become a party to the 1991 Supplemental Agreement, pursuant to Section 20 thereof, by executing a Declaration of Endorsement and Adoption of Supplemental Agreement substantially in the form attached to the 1991 Supplemental Agreement.) The 1991 Supplemental Agreement would be substantially identical to the 1989 Supplemental Agreement, except that the 1991 Supplemental Agreement would contain an additional section describing the obligations of the Exchanges with respect to dividend equivalents.

4. Pledge Agreement

OCC submitted a form of Pledge Agreement for use in connection with IPs as an Exhibit to its original IP filing, and OCC is proposing to reactivate that form in connection with reactivation of its IP program. No changes are proposed to the form as originally submitted, and a copy of the form is not attached to the proposed rule change.

5. Supplements to the Options Exercise Settlement Agreements

OCC entered into side letters, each dated April 24, 1989, extending the Options Exercise Settlement Agreements between OCC and each of National Securities Clearing Corporation, Midwest Clearing Corporation, and Stock Clearing Corporation of Philadelphia to provide for settlements of physical delivery of IPs traded on Amex that are exercised for delivery of stock. The form of these side letters was initially filed with the Commission as an Exhibit to OCC's original IP filing. These side letters remain in effect, and a copy is not attached to the proposed rule change.

6. Statutory Basis

The Commission has previously determined, in Release No. 34–26713, 54 FR 15575 (1989), that OCC's rules relating to IPs are consistent with the purposes and requirements of section 17A of the Act. PHLX and AMEX have amended their respective IP rules in response to the determination of the Court of Appeals for the Seventh Circuit in *CME* v. *SEC* that IPs constitute futures contracts subject to the exclusive jurisdiction of the Commodity Futures Trading Commission. OCC believes that, under the analysis of the Court of Appeals, IPs having the amended characteristics proposed by PHLX and AMEX in File No. SR–PHLX–89–48 and File No. SR–AMEX–90–28, respectively, and by OCC in this proposed rule change would not be futures contracts. Accordingly, OCC believes that this proposed rule change is consistent with the purposes and requirements of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition. To the contrary, OCC believes that approval of the proposed rules would permit worthwhile new financial instruments to trade in U.S. markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited by OCC with respect to the proposed rule change and none have been received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period:

(i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reason for so finding, or

(ii) As to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principle office of OCC. All submissions should refer to File No. SR–OCC–91–05 and should be submitted by May 10, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–9272 Filed 4–18–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-29073; File No. SR-PTC-91-05]

Self-Regulatory Organizations; Participants Trust Company; Filing and Order Granting Temporary Accelerated Approval of a Proposed Rule Change Relating to the Elimination of Prorated Charges to Participants for Principal and Interest Advances

April 12, 1991.

I. Introduction

On April 4, 1991, the Participants Trust Company ("PTC") filed a proposed rule change (File No. SR-PTC-91-05) [1] with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[2] The Commission is publishing this notice to solicit comments from interested persons. As discussed below, this order also temporarily approves the proposal on an accelerated basis until June 14, 1991.

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend PTC's rules to eliminate pro-rata charges to participants for PTC advances of Principal and Interest payments ("P&I") on securities held for those participants. Article III, Rule 2, section 2(f) of the rules of PTC, providing for the proration among benefitted participants of the cost of financing principal and interest advances, is deleted and current section 2(g) is renumbered 2(f).

III. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item V below. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

[1] The proposed rule change was filed originally on October 23, 1990 (File No. SR-PTC-90-07) and was approved temporarily through April 15, 1991. See Securities Exchange Act Release No. 28789 (January 16, 1991) 56 FR 2787.

[2] 15 U.S.C. 78s(b)(1).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

PTC has determined that the cost of financing principal and interest advances can be adequately covered by investing collected principal and interest payments upon receipt; the purpose of the proposed rule change is to reduce fees and costs to participants.

The basis for this proposed rule change under the Act is the requirement under section 17A(b)(3)(D) that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees and other charges among its participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PTC does not perceive that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

PTC has not solicited, and does not intend to solicit, comments on this proposed rule change. PTC has not received any unsolicited written comments from members or other interested parties.

IV. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

PTC has requested accelerated effectiveness. PTC believes that there is good cause to approve the proposal prior to the thirtieth day after publication in the **Federal Register** because it will allow PTC to continue covering the cost of borrowing P&I advances with interest from investing P&I receipts.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. SR-PTC-91-05 and should be submitted by May 10, 1991.

VI. Discussion

PTC charges participants who receive P&I advances pro rata for PTC's external borrowing costs, while at the same time earning interest income by investing P&I received prior to Distribution Date. In effect, PTC is duplicating revenue associated with its P&I payment service by not offsetting borrowing costs with earned interest income. As proposed, PTC intends to eliminate this inefficiency by applying P&I interest income to offset the cost of financing P&I and eliminating the existing pro rata charge to participants for such cost. PTC's proposed rule change would provide for a more equitable allocation of the cost of financing P&I advances and thus the Commission preliminarily believes that the proposal is consistent with section 17A(b)(3)(D) of the Act,[3] which requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues, fees and other charges among its participants.

The Commission is concerned that PTC retains sufficient funds and credit sources to adequately meet its payment obligations. Currently the proportion of interest earned on PTC's P&I receipts to PTC's cost of financing for P&I advances is approximately 2:1 on an annualized basis.[4] Nevertheless, in the event PTC's income from overnight investment of P&I receipts falls short of PTC's cost of financing P&I advances, PTC's credit sources could be eroded. This is possible on a few occasions during the year when the P&I payment date falls on a holiday or a weekend.

PTC has filed a companion rule change, SR-PTC-90-09, which it believes will reduce external borrowing when the Payment Date falls on a holiday or a weekend.[5] Because of the

[3] 15 U.S.C. 78q-1(b)(3)(D).

[4] Telephone conversation between Leopold Rassnick, PTC counsel, and Jonathan Kallman, Assistant Director, Division of Market Regulation, Commission.

[5] Under that proposal, when a Payment Date falls on a weekend or a holiday, PTC would be allowed to distribute all P&I collected and available on Distribution Date but will allow PTC to delay the distribution of any remaining P&I payments until P+2. On P+2, PTC will distribute any additional funds that are made available and borrow the

Continued

Commission's concern that interest earned on P&I receipts cover the cost of financing, the Commission believes it is prudent to complete its review of SR-PTC-90-09 prior to approving this proposal permanently. In addition, the Commission has requested that PTC monitor, on a monthly basis, the amount of funds borrowed for P&I advances, the cost of financing P&I advances, and the amount of interest earned on the investment of P&I receipts.[6]

The Commission believes that there is good cause for approving the proposal prior to the thirtieth day after publication in the Federal Register in that the proposal will allow PTC to continue covering the cost of borrowing for P&I advances with income from overnight investment of P&I receipts, instead of charging participants the cost of P&I advances, until the Commission has completed its review of this filing and SR-PTC-90-09. As noted above, the proposed rule change was originally filed on October 23, 1990, and was approved temporarily through April 15, 1991. No comments were received.

VII. Conclusion

For the reasons stated above, the Commission preliminarily finds that PTC's proposal is consistent with section 17A of the Act. The Commission also finds good cause for approving the proposal prior to the thirtieth day after publication in the Federal Register.[7] Accordingly, the Commission is approving the proposal temporarily until June 14, 1991.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[8] that PTC's proposed rule change (SR-PTC-91-05) be, and hereby is, temporarily approved until June 14, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-9267 Filed 4-18-91; 8:45 am]

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remainder. In this way, PTC believes there will exist a greater probability that borrowing costs will be covered adequately through interest income. See Securities Exchange Act Release No. 28744 (January 7, 1991), 56 FR 1427.

[6] This proposal is not intended to have any effect on the Commission's directive in PTC's temporary registration order that requires PTC to modify its P&I collection and payment procedures to allow for voluntary instead of mandatory advances of P&I. See Securities Exchange Act Release No. 26671 (March 28, 1989), 54 FR 13288.

[7] Pursuant to section 19(b)(4)(A) of the Act, 15 U.S.C. 78s(b)(4)(A), the Commission contacted the Federal Reserve Board of Governors ("Federal Reserve Board"), PTC's appropriate regulatory agency, regarding the proposed rule change. Don Vinnedge, Manager, Trust Activities Program, Federal Reserve Board, stated that the staff of the Federal Reserve Board believes that the proposed rule change is consistent with the safeguarding of securities and funds in the custody or control of PTC or for which it is responsible. Telephone conversation between Don R. Vinnedge, Manager, Trust Activities Program, Federal Reserve Board, and Scott Wallner, Staff Attorney, Division of Market Regulation, Commission (April 10, 1991).

[8] 15 U.S.C. 78s(b)(2).

[Release No. 34-29071; File No. SR-PHLX-91-07]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Dual Affiliations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 20, 1991, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX, pursuant to Rule 19b-4, submits as a proposed rule change a proposal to amend PHLX Rule 793 respecting dual affiliations. The proposed rule change adds dual affiliations of associated persons of member/participant organizations to the list of affiliations that must be disclosed to the Office of the Secretary of the the Exchange pursuant to the rule. The rule would broaden the categories of dual affiliations that must be reported to the Exchange to cover more frequent types of dual affiliation arrangements, whereas the current rule merely includes dual affiliations involving general/limited partners, officers, directors and stockholders of member/participant organizations.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections, (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange notes that most dual affiliation arrangements do not involve general or limited partners, directors, officers or stockholders of member or participant organizations, but rather persons associated with these firms. The additional language to Rule 973 is intended to reach the more common dual affiliation arrangements involving employees, whether market makers, floor brokers or clerks. Expansion of the scope of Rule 793 in this way more realistically addresses the concerns underlying the requirement for disclosure of dual affiliation arrangements. Concerns pertaining to potential conflicts of interest, for example, arise with respect to dual affiliations by associated persons, and thus Rule 793 should encompass these relationships.

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act which provides, in part, that the rules of the Exchange be designed to protect the investing public, as well as remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii)

as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change; or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by May 10, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: April 12, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-9271 Filed 4-18-91; 8:45 am]

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Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

April 15, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Rhone-Poulenc Rorer Inc.
Common Stock, No Par Value (File No. 7-6722)
United States Banknote Corp.
Common Stock, $.01 Par Value (File No. 7-6723)
United States Banknote Corp.
Cumulative Preferred, $1.00 Par Value (File No. 7-6724)
Viacom, Inc.
Non-Voting Common Stock (File No. 7-6725)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before May 6, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-9185 Filed 4-18-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18094; File No. 812-7687]

Mutual Benefit Life Insurance Company, et al.

April 12, 1991.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: The Mutual Benefit Life Insurance Company ("Mutual Benefit"), Mutual Benefit Variable Contract Account-11 of The Mutual Benefit Life Insurance Company (the "Account"). Directed Services, Inc. ("DSI") and Dreyfus Service Corporation ("DSC").

RELEVANT 1940 ACT SECTIONS: Exemptions requested pursuant to section 6(c) from sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF THE APPLICATION: Applicants seek an order to permit the deduction of mortality and expense risk charges from the assets of the Account under a Deferred Variable Annuity certificate issued under the Deferred Variable Annuity Master Group Contract and to permit the deduction of a premium-based sales load from the accumulation value of the Account.

FILING DATES: The Application was filed on February 19, 1991 and amended on April 2, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is requested. Any requests must be received by the Commission by 5:30 p.m., on May 6, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the Commission, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Directed Services, Inc., P.O. Box 5179, FDR Station, New York, New York 10150-5179.

FOR FURTHER INFORMATION CONTACT: Michael V. Wible, Staff Attorney, at (202) 272-2026, or Barry D. Miller, Senior Attorney, at (202) 272-3012 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Mutual Benefit is a mutual life insurance company organized in the State of New Jersey in 1845 and presently licensed to engage in the life insurance business in all 50 states, the District of Columbia and Puerto Rico.

2. The Account is a separate investment account of Mutual Benefit established to act as a funding vehicle for certificates (the "Certificates") issued under the Deferred Variable Annuity Master Group Contract (the "Deferred Annuity") and the Variable Annuity Certain Master Group Contract (the "Annuity Certain"). The Account is organized as a unit investment trust and has filed registration statements on Form N-4 under the 1940 Act and the Securities Act of 1933 (the "1933 Act"), File Nos. 33-27928 and 33-33859. The Account is divided into divisions. Each division will invest in shares of a designated investment portfolio of the Specialty Managers Trust (the "Trust") or of the Dreyfus Variable Investment

Fund (the "Fund"). The Account will issue certain Certificates (File No. 33–27928) which permit investment only in those divisions of the Account which invest in shares of the Trust and the general account of Mutual Benefit, and other Certificates (Fine No. 33–33859) which permit investment only in those divisions which invest in shares of the Fund and the general account of Mutual Benefit.

3. The Trust and the Fund are registered with the Commission as open-end investment companies of the series type. Pursuant to a distribution agreement between DSI and Mutual Benefit, DSI acts as principal underwriter and distributor of the Certificates, the proceeds of which are invested only in the Trust and the general account of Mutual Benefit. DSC and Mutual Benefit have entered into a distribution agreement pursuant to which DSC acts as principal underwriter and distributor of the Certificates, the proceeds of which are invested only in the Fund and the general account of Mutual Benefit.

4. The Certificates are currently intended to be used in connection with either a retirement plan qualified under Sections 408(a) and/or 408(b) of the Internal Revenue Code or a non-qualified plan.

5. The Annunity Certain is a group immediate annuity which provides for payment of a single premium and allows for variable annuity payments to be made to the Annuitant.

6. The Deferred Annuity is a group flexible purchase payment contract which provides for an initial purchase payment and for subsequent purchase payments if the Certificate owner so desires.

7. Purchase payments for Certificates issued under the Deferred Annuity may be allocated to divisions of the Account which invest in the Fund and/or divisions of the Account which invest in the Trust. Under Certificates (File No. 33–33859) issued pursuant to the Deferred Annuity under which payments are allocated to the Fund, an administrative charge of $30 will be deducted annually in equal installments from the accumulation value of a Certificate to reimburse Mutual Benefit for the anticipated actual cost of administrative expenses relating to the Certificates. The Administrative charge will not be deducted for Certificates for which the initial premium payment was $1,000,000 or more. Mutual Benefit may also assess an asset-based administrative charge accrued daily, not to exceed 0.10% annually of the assets of each Certificate which will only be deducted under the Certificates during Certificate years one through twenty. There will be no administrative charge thereafter.

8. Under Certificate (File No. 33–27928) issued pursuant to the Deferred Annuity under which payments are alllocated to the Trust, an administrative charge of $40 annually will be deducted in equal installments from the accumulation value of Certificate to reimburse Mutual Benefit for the anticipated actual cost of administrative expenses relating to the Certificate. Mutual Benefit may assess an asset-based administrative charge accrued daily, not to exceed 0.10% annually of the assets of each Certificate. The administrative charge assessed under the Certificates remains in effect for the life of the Certificates.

9. Purchase payments for Certificates (File No. 33–27928) issued under the Annuity Certain may only be allocated to divisions of the Account which invest in the Trust. In the Annuity Certain, an administrative charge of 0.50% of a single premium is deducted in the same manner and over the same period of time as the deferred load.

10. Mutual Benefit allows the Certificate owner five free allocation changes between divisions per Certificate year. For each additional allocation change, Mutual Benefit will charge the Certificate owner $25 at the time each allocation change is processed. The charge is paid to Mutual Benefit to compensate it for the anticipated actual cost of administrative expenses relating to allocation changes.

11. Mutual Benefit makes a deduction from the accumulation value for premium or other state and local taxes as they are incurred. Currently these charges range up to 3%.

12. The sales loads imposed under the Certificates may be structured in one of two manners. Currently, the Certificates provide for deferred loading at a maximum rate of 7.5% of each payment. If the payment received at issue on one Certificate or several simultaneously purchased Certificates exceeds specified limits, Mutual Benefit may reduce this charge. This charge is allocated to cover distribution expenses. All deferred loading applicable to initial or additional purchase payments or single premium payments is deducted by Mutual Benefit at the time of payment, but is advanced back to the divisions and recovered periodically by Mutual Benefit from the divisions in equal installments over a period specified in the Certificates. If the Certificate owner surrenders a Certificate, any remaining deferred policy loading will be recovered by Mutual Benefit at that time. A portion of the deferred loading may be recovered in connection with partial withdrawals in excess of 15% of accumulation value. For purposes of the provisions of the 1940 Act applicable to sales loads, the deferred loading is a front-end sales load.

13. On March 1, 1991, Applicants filed a post-effective amendment to its registration statement (File No. 33–33859), pursuant to which it will offer certain Certificates that may provide, on a prospective basis, for a combination of a premium-based sales load and a contingent deferred sales load in lieu of the deferred sales load described above. If a payment received at issue on one Certificate or several simultaneously purchased Certificates exceeds the current limit of $1,000,000, Mutual Benefit may reduce these charges. These charges are allocated to cover distribution expenses. Mutual Benefit will deduct the premium-based sales load from accumulation value in an amount equal to a maximum of 7.50% of each premium payment. The premium-based sales charge will be deducted in equal installments for a period of not more than ten years or until such time as the Certificate owner surrenders the Certificate or annuitizes.

14. A contingent deferred sales load may be deducted if a Certificate owner surrenders a Certificate during the first eight years after a premium has been paid. Currently, the maximum contingent deferred sales load is 5.00% of such premium in year one and will decline to zero after year eight. Mutual Benefit is relying on Rule 6c–8 to deduct this charge. A contingent deferred sales load may also be deducted for partial withdrawals in excess of 15% of accumulation value. Mutual Benefit will monitor on an individual Certificate owner basis to ensure that the sum of the premium-based sales load and any contingent deferred sales load will not exceed 9.00% of each premium payment. Once a Certificate is purchased, the sales load will not be increased.[1]

15. Applicants submit that imposition of a sales charge in the form of a premium-based charge to be deducted from the accumulation value is more favorable to a Certificate owner than the deduction of this charge from premiums paid, the conventional way of imposing such charges. The amount of the Certificate owner's investment in the Account is not reduced as it would be if these charges were taken in full directly from premiums paid. Second, the total amount charged to any Certificate

[1] Applicants represent that, during the Notice Period, the application will be amended to reflect the representations in this paragraph.

owner is no greater than it would be if these charges were taken from premiums paid. Finally, the fact that the entire amount of the charge has not been deducted will favorably affect the amount of the death benefit. As a result, Applicants submit that Certificate owners will obtain the advantages which arise from the deferred nature of the charge, without incurring any additional costs.

16. Based on the foregoing, applicants request exemption from sections 2(a)(35), 26(a)(2)(C) and 27(c)(2) to the extent necessary to permit the premium-based sales load to be deducted from accumulation value in the manner described above.

17. In the Deferred Annuity, Mutual Benefit currently imposes a charge for its guarantee of a minimum death benefit payable if the Certificate owner or annuitant (when there is no contingent annuitant) dies prior to the annuity commencement date. Applicants represent that this is not an asset-based charge. In the Deferred Annuity, the guaranteed death benefit charge is at a rate of $0.60 per $1,000 of guaranteed death benefit per year. In the future, the Account may offer other variable annuity contracts that may make a guaranteed death benefit charge of up to $1.20 per $1,000 of guaranteed death benefit per year. The Applicants have previously received the exemptive relief necessary to deduct the charge for the guaranteed death benefit. Investment Company Act Rel. No. 17297 (January 8, 1990) (Notice), Investment Company Act Rel. No. 17331 (February 6, 1990) (Order).

18. The Certificates issued under the Deferred Annuity provide that a maximum mortality and expense risk daily charge equal to a rate of 0.003448% (equivalent to an annual charge of 1.25%) of the asset values in each division of the account will be deducted. Of this amount, approximately 0.80% is allocated to mortality risk and 0.45% is allocated to expense risk. To the extent that a guaranteed death benefit charge is imposed with respect to the Deferred Annuity, the mortality and expense risk charge will be limited to a level such that the sum of the mortality and expense risk charge and an asset-based approximation of the guaranteed death benefit charge does not exceed 1.25% of the assets in the division of the Account.

19. The mortality risk assumed by Mutual Benefit arises from its obligation to continue to make annuity payments under the income plan provisions of the Certificates regardless of how long each annuitant lives and regardless of how long all payees as a group live. The mortality risk under the Deferred Annuity is the risk that, after annuitization or upon selection of an annuity option with a life contingency, annuitants will possibly live longer than Mutual Benefit's actuarial projections indicate, resulting in higher than expected payments during the payout phase, since amounts under the income options are guaranteed not to be less than the tables discussed in the Deferred Annuity. Mutual Benefit also assumes a risk that it may be required to pay out a guaranteed death benefit in excess of the accumulation value. In addition, Mutual Benefit assumes a risk that the charges for the administrative expenses may not be adequate to cover such expenses.

20. If the charges are insufficient to cover the actual costs of the mortality and expense risk, the loss will fall on Mutual Benefit; conversely, if the deduction proves more than sufficient, the excess will be a profit to Mutual Benefit. Any profits resulting to Mutual Benefit from the mortality and expense risk charge can be used by Mutual Benefit, at its discretion, for any business purpose, including distribution expenses relating to the Certificates.

21. Applicants represent that they have reviewed publicly available information regarding the level of the mortality and expense risk charge under comparable variable annuity contracts currently being offered in the industry, taking into consideration such factors as current charge level or annuity rate guarantees and the markets in which the Certificates will be offered. Based upon the foregoing, applicants further represent that the maximum charges under the certificates are within the range of industry practice for comparable contracts. Applicants will maintain and make available to the Commission, upon request, a memorandum outlining the methodology underlying this representation.

22. Applicants do not believe that the sales load imposed under the Certificates will necessarily cover the expected cost of distributing the Certificates. Any shortfall will be made up from the general account assets which will include amounts derived from the risk charges. Mutual Benefit has concluded that there is a reasonable likelihood that the distribution financing arrangement being used in connection with the Certificates will benefit the Account and Certificate Owners. Mutual Benefit will keep and make available to the Commission, upon request, a memorandum setting forth the basis for this representation.

23. Applicants represent that the Account will only invest in underlying funds which have undertaken to have a board of directors/trustees, a majority of whom are not interested persons of the funds, formulate and approve any plan under Rule 12b–1 under the 1940 Act to finance distribution expenses.

24. To the extent relief is necessary to permit the deduction from the Account of the mortality and expense risk charge under the Certificates, Applicants request an exemption from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 91–9276 filed 4–18–91; 8:45]

BILLING CODE 8010-01-M

[Release No. 35–25296]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

April 12, 1991.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 6, 1991 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

CNG Transmission Corporation, et al. (70–7641)

CNG Transmission Corporation ("Transmission"), 445 West Main Street, Clarksburg, West Virginia 26301, a

wholly owned gas pipeline subsidiary company of Consolidated Natural Gas Company, a registered holding company, and CNG Iroquois, Inc. ("CNGI"), 445 West Main Street, Clarksburg, West Virginia 26301, a wholly owned subsidiary of Transmission, have filed a post-effective amendment to their application-declaration filed under sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act of Rules 16, 43, 44, 45 and 87 thereunder.

By orders dated January 9, 1991 and February 28, 1991 (HCAR Nos. 25239 and 25263, respectively) ("1991 Orders"), the Commission authorized, among other things, certain transactions which included:

(1) CNGI's acquisition of an aggregate 9.4% general partnership interest in Iroquois Gas Transmission System L.P. ("Iroquois"), which was formed to construct and own an interstate natural gas pipeline extending from the Canadian border to Long Island, New York;

(2) CNGI's equity contributions to Iroquois up to an aggregate amount of $25 million;

(3) The funding by Transmission of CNGI's investment in Iroquois through the issue and sale to Transmission of up to 2,500 shares of CNGI common stock, $10,000 par value ("Common Stock"), and/or the making of open account advances to CNGI, through June 30, 1993, in such amounts that the aggregate outstanding equity contributions made by Transmission will not at any one time exceed $25 million; and

(4) The providing, through June 30, 1993, of guarantees and indemnities by Transmission on CNGI's behalf up to $25 million at any one time.

Iroquois has now developed a plan ("Plan") providing for the permanent financing of the construction and operation of its pipeline system through a long-term credit facility agreement ("Credit Facility") with one or more institutional lenders. The Plan also provides for funding of construction costs payable prior to the closing on the Credit Facility under a bridge credit facility agreement ("Bridge Facility") with one or more institutional investors and through additional cash capital contributions by the Iroquois partners ("Partners"). The Bridge Facility will be implemented in two stages:

(1) Stage one ("Stage One"), which allows for borrowings of up to $120 million; and

(2) Stage two ("Stage Two"), which allows for borrowings of up to an addition $55 million after June 15, 1991 if the Credit Facility has not closed by that date and Iroquois determines that additional interim financing is needed to continue construction.

The Plan further requires that each Partner provide guarantees or other support with respect to a proportionate share of Stage One borrowings ("Initial Bridge Support") and Stage Two borrowings ("Additional Bridge Support") (collectively, "Bridge Suppport"). Under the Plan, CNGI would be required to provide $11.27 million in Initial Bridge Support and $5.17 million in Additional Bridge Support. Each Partner's Bridge Support will be supported in turn by a parent company guarantee or letter of credit. Subsequent to the termination of the Bridge Supports, each Partner, upon Iroquois' request, would be required to guarantee or otherwise support ("Back-end Support") a proportionate share of Iroquois obligations under the Credit Facility. Under the Plan, CNGI would be required to provide $11 million in Back-end Support. Each of the Back-end Supports would, in turn, be supported by a parent company guarantee or letter of credit.

CNGI's Bridge Support to Iroquois will initially consist of: (1) A capital contribution agreement under which CNGI will agree to make capital contributions to Iroquois in an amount which, when aggregated with all other previously-made contributions to Iroquois, will not exceed $25 million; and (2) Transmission's guarantee of CNGI's obligations to Iroquois in an amount which, when aggregated with all other previously-made guarantees of CNGI's obligations, will not exceed $25 million, as previously authorized by the 1991 Orders. Transmission and CNGI now propose to replace the foregoing arrangement with a Bridge Support and parent guarantee similar to that given by other Partners and their respective parents with respect to the Bridge Facility.

GNGI proposes to increase its authorized Common Stock from 2,500 shares to 5,000 shares, which would increase its authorized capitalization to $50 million. Authorization is also sought, through June 30, 1993, for: (1) CNGI to obtain additional funds from time-to-time from Transmission through (a) the issue and sale to Transmission of additional shares of CNGI Common Stock, which CNGI may purchase from Transmission, hold as treasury shares, and resell to Transmission, and (b) open account advances ("Advances") in such amounts that the aggregate outstanding amount obtained from Transmission from the sale of Common Stock or through Advances will not at any one time exceed $35 million; (2) CNGI to increase the aggregate amount of its equity investment in Iroquois from $25 million to $35 million; (3) CNGI to indemnify third parties on Iroquois' behalf and to guarantee performance of Iroquois' obligations in amounts not to exceed $35 million at any one time; and (4) Transmission to increase its authorization to indemnify third parties on CNGI's behalf and to guarantee performance of CNGI's obligations from $25 million to amounts not to exceed $35 million at any one time.

GPU Service Corporation (70–7841)

GPU Service Corporation ("Service"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a wholly-owned subsidiary company of General Public Utilities Corporation ("GPU"), a registered holding company, has filed an application under sections 9(a) and 10 of the Act.

Service operates and maintains the GPU System Computer Network ("Network") for the GPU System. The Network is comprised of leased mainframe computer processors and operating software. During the normal course of business and operation of the Network, the processing capacity will exceed the processing demands of the GPU system companies resulting in reserve computer capacity ("Reserve Capacity"). A portion of the Reserve Capacity accommodates peak periods of demand by the GPU system companies and the remainder accommodates incremental growth in their demand.

Service proposes to enter into short-term and long-term agreements ("Leases") to lease portions of the Reserve Capacity to nonaffiliates ("Lessees"), from time-to-time through December 31, 2001, for a consideration to be negotiated with prospective Lessees. Service states that it will only enter into Leases to the extent that such leased Reserve Capacity is not reasonably anticipated to be needed to accommodate the normal and peak requirements of GPU System companies, based upon estimates of such requirements made not less frequently than yearly.

Service also proposes to offer technical and operational support services in connection with the Leases. While some support services may be offered to Lessees for no additional consideration, Service anticipates that an additional consideration will be negotiated with the Lessees depending upon the type and amount of services required.

Service anticipates that the total cost, including investment of capital or of employee's time, to be incurred in connection with the proposed leasing of

Reserve Capacity and the provision of services will not exceed $500,000, and that the total revenues derived thereform will not exceed $2.5 million through December 31, 1996. Service also states that anticipated revenues will be used to offset and reduce the cost of services charged to its affiliate companies.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-9277 Filed 4-18-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended April 12, 1991

The Following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47500.

Date filed: April 10, 1991.

Parties: Members of the International Air Transport Association.

Subject: Composite Cargo Resolutions R-1 To R-6.

Proposed Effective Date: May 1, 1991.

Docket Number: 47502.

Date filed: April 12, 1991.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 478 (TC3 Spouse Fares from Japan).

Proposed Effective Date: October 1, 1991.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91-9246 Filed 4-18-91; 8:45 am]

BILLING CODE 4910-62M-M

Office of the Secretary

New Route Opportunities (U.S.-Canada)

By this notice we invite applications from all certificated U.S. air carriers interested in serving the following route: From one point (which may be changed) in the United States to Montreal, Quebec (to be served through Mirabel Airport).

On December 4, 1990, the United States and Canada amended *ad referendum* the Air Transport Agreement between the two countries to provide for services by one U.S. carrier over the above route. The designated carrier may provide passenger, all-cargo or combination service. Under the terms of the December 1990 amendment, the designated U.S. carrier may serve Mirabel from any U.S. gateway except New York (John F. Kennedy Airport) and Miami (Miami International Airport). New York and Miami may be served behind the chosen gateway provided that the carrier changes the flight number at the gateway.

In view of this new route opportunity, we invite interested carriers to file applications for authority to serve the route above no later than April 5, 1991. Answers shall be due no later than April 10, 1991, and responsive pleadings no later than April 15, 1991. Carriers which have already filed for authority to serve between the U.S. and Montreal (Mirabel Airport) [1] need not refile unless they wish to supplement their requests as a result of changed circumstances, etc.[2]

Except as modified above with respect to filing and response dates, applications should be filed pursuant to part 302, subpart D of the Department's regulations for exemption applications and subpart Q for certificate applications. Applications should be filed with the Department's Docket Section, room 4107, 400 Seventh Street, SW., Washington, DC 20590. Procedures for acting on the applications filed will be established by future Department order.

Dated: March 25, 1991.

Paul L. Gretch

Director, Office of International Aviation.

[FR Doc. 91-9245 Filed 4-18-91; 8:45 am]

BILLING CODE 4910-62-M

Maritime Administration

[Docket S-878]

Waterman Steamship Corp.; Application for Modification of Section 804 Waiver to Operate Foreign-Flag Vessels

Waterman Steamship Corporation (Waterman), by letter of April 12, 1991, requested an amendment of the section 804 waiver granted on January 31, 1991, which permitted Waterman to own and operate certain foreign-flag vessels, including the LASH ACADIA FOREST. The requested amendment would modify the waiver so as to permit the ACADIA FOREST to operate as a feeder in the Indonesia/Malaysia/Singapore/Burma region. The current waiver is effective until December 31, 1996, the expiration date of the subject Operating-Differential Subsidy Agreement, Contract MA/MSB-450.

In support of its request, Waterman advises that its LASH service has historically included the loading and unloading of cargo at numerous Indonesian and Malaysian outports where draft limitations and/or unimproved conditions do not permit pierside loading or discharge by large ocean-going vessels. Waterman states that this service is unique in that shallow-draft LASH barges can easily serve these ports. However, since numerous ports are served, it is essential to gather these barges at one or two central locations in order to minimize required stops by the linehaul LASH mother vessels (the vessels that transit to and from the U.S. Atlantic and gulf).

In this connection, Waterman states that in recent months it has been required to add five additional outports to the list of ports regularly served by LASH barges (Banjarmasin, Kuching, Potianak, Semarang, and Surabaya). Thirteen outports are now being served, compared to only six in prior years. Waterman asserts that service to this expanded range of ports must continue in order to meet shipper requirements, but the numerous and far-flung ports of call are overwhelming the ability of the FLASH units to keep pace. Waterman believes that service schedule disruptions will soon become intolerable without an alternative means to gather the LASH barges and feed them into the linehaul U.S.-flag mother vessels.

According to Waterman, no additional FLASH units are available, and there is no available U.S.-flag LASH vessel that could be utilized as a feeder. Additionally, it would be economically impossible, and commercially unacceptable, to rely on breakbulk "coaster" vessels to move the cargo from the numerous outports: This would, in Waterman's view, double the required cargo loading and unloading, producing prohibitive costs and increased cargo damage. The charter arrangement, however, utilizing the ACADIA FOREST will provide for standard commercial rates to be paid by Waterman.

Waterman asserts that this section 804 request does not propose service to or from any new ports, and given the unique, neo-bulk LASH service offered

[1] Federal Express Corporation (Docket 47403) and DHL Airways, Inc. (Docket 47452) have alteady filed exemption applications to serve the route. Federal Express proposes to operate nonstop scheduled all-cargo air service from Memphis, Tennessee; DHL proposes to operate nonstop all-cargo air service from Cincinnati, Ohio. Both carriers propose to begin services immediately.

[2] Interested parties may file competing applications and responsive pleadings to applications already filed in accordance with the dates specified above.

by Waterman, approval of this request will have no appreciable impact on any other U.S.-flag essential service.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such application within the meaning of section 804 of the Act and desiring to submit comments concerning the application, must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC. 20590. Comments must be received no later than 5 p.m. on April 24, 1991.

This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administration will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

Dated: April 17, 1991.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 91-9343 Filed 4-17-91; 11:37 a.m.]

BILLING CODE 9410-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: April 15, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0066.
Form Number: 2688.
Type of Review: Extension.
Title: Application for Additional Extension of Time to File U.S. Individual Income Tax Return.

Description: Internal Revenue Code section 6081 permits the Secretary to grant a reasonable extension of time for filing any return, declaration, statement, or other document. This form is used by individuals to ask for an additional extension of time to file U.S. income tax returns after filing for the automatic extension, but still needing more time.

Respondents: Individuals or households.

Estimated Number of Respondents: 1,450,000.

Estimated Burden Hours Per Response:

Learning about the law or the form—7 minutes
Preparing the form—10 minutes
Copying, assembling, and sending the form to IRS—20 minutes

Frequency of Response: On occasion.
Estimated Total Reporting Burden: 899,000 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Juanita F. Holder,

Departmental Reports Management Officer.

[FR Doc. 91-9175 Filed 4-18-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: April 12, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0007.
Form Number: CF 7506.
Type of Review: Extension.
Title: Warehouse Withdrawal Conditionally Free of Duty and Permit.
Description: CF 7506 is an application and permit to withdraw goods from a warehouse without paying duties or taxes. The form also covers several types of withdrawals from a Customs bonded warehouse, subject to Customs' controls.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 73.

Estimated Burden Hours Per Response/Recordkeeping: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Recordkeeping/ Reporting Burden: 16,476 hours.

Clearance Officer: Ralph Meyer (202) 343-0044, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-9176 Filed 4-18-91; 8:45 am]

BILLING CODE 4820-02-M

Public Information Collection Requirements Submitted to OMB for Review

Date: April 12, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0152.
Form Number: 3115.
Type of Review: Revision.
Title: Application for Change in Accounting Method.
Description: Form 3115 is used by taxpayers who wish to change their method of computing their taxable income. The form is used by the IRS to determine if electing taxpayers have met the requirements and are able to change to the method requested.

Respondents: Individuals or households, Farms, Businesses or other for-profit.

Estimated Number of Respondents: 6,400.

Estimated Burden Hours Per Response/Recordkeeping:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to IRS
3115	17 hrs., 56 mins.	3 hrs., 26 mins.	5 hrs., 5 mins.
Sch. A	17 hrs., 13 mins.	1 hr., 58 mins.	3 hrs., 32 mins.
Sch. B	22 hrs., 43 mins.	3 hrs., 11 mins.	3 hrs., 41 mins.
Sch. C	4 hrs., 18 mins.	1 hr., 4 mins.	2 hrs., 23 mins.
Sch. D	16 hrs., 30 mins.	2 hrs., 35 mins.	2 hrs., 58 mins.

Frequency of Response: Annually.

Estimated Total Recordkeeping/ Reporting Burden: 318,927 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–9177 Filed 4–18–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Commission on the Future Structure of Veterans Health Care; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Commission on the Future Structure of Veterans Health Care will be held on May 21 and 22, 1991. The session will be held between 9 a.m. and 5:30 p.m. on May 21, 1991 and 9 a.m. and 3 p.m. on May 22, 1991 at the Ramada Renaissance Hotel, Grand Ballroom—Central Salon, 999 9th Street, NW., Washington, DC 20001–9000. The Commission's purpose is to review the missions and programs of the VA's health care facilities to determine whether changes in services, programs, or missions at individual facilities are needed, with a focus on providing care to eligible veterans in 2010. The agenda for the meeting will include presentations to the Commission by various VA and non-VA officials as well as working sessions for the Commissioners to discuss, study, and analyze specific critical VA health care issues. The meeting will be open to the public up to the seating capacity of the room. Interested persons may file written statements with the Commission before or within 10 days after the close of the meeting for inclusion in the official hearing transcript.

Persons wanting to file written statements or wanting additional information regarding the meeting should contact Mr. Robert Moran, Commission on the Future Structure of Veterans Health Care, Techworld Plaza, 800 K Street, NW., P.O. Box 88, Washington, DC, 20001, telephone (202) 633–7079.

Dated: April 8, 1991.

By Direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 91–9174 Filed 4–18–91; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 76
Friday, April 19, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:25 p.m. on Tuesday, April 16, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider matters relating to: (1) Corporate activities, and (2) the resolution of a failed thrift institution

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, Vice Chairman Andrew C. Hove, Jr. and Director T. Timothy Ryan, Jr. (Director of the Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550 17th Street, NW., Washington, DC.

Dated: April 16 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91-9374 Filed 4-17-91; 8:45 am]

BILLING CODE 6714-01-M

federal register

Friday
April 19, 1991

Part II

Department of Agriculture

Agricultural Stabilization and Conservation Service
7 CFR Parts 718 and 719

Commodity Credit Corporation
7 CFR Parts 1413 and 1414

Food, Agriculture, Conservation, and Trade Act; Implementation; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 718 and 719

Commodity Credit Corporation

7 CFR Parts 1413 and 1414

Food, Agriculture, Conservation, and Trade Act; Implementation

AGENCY: Commodity Credit Corporation and Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to adopt as final, with certain changes, the proposed rules published in the **Federal Register** on February 26, 1991 (53 FR 8044) and on February 28, 1991 (53 FR 8285). On February 15, 1991 (53 FR 6366) CCC also published a proposed list of certain crops which could be planted on certain acreages enrolled in the 1991 wheat, feed grains, upland cotton and rice programs.

Accordingly, this final rule sets forth at 7 CFR parts 718, 719, 1413, and 1414, the regulations which relate to the feed grain, rice, upland and extra long staple cotton, wheat, integrated farm management programs and general compliance and reconstitution provisions, for the 1991 through 1995 crop years.

EFFECTIVE DATE: April 19, 1991.

FOR FURTHER INFORMATION CONTACT: H.E. Maynard, Director, Cotton, Grain, and Rice Price Support Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013, 202–447–7641.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512–1 and has been classified "major". It has been determined that this rule will result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Final Regulatory Impact Analyses are being prepared with respect to the programs for the 1991 crops of wheat, feed grains, cotton, and rice. Copies of the analyses will be available to the public from Director, Commodity Analysis Division, Agricultural Stabilization and Conservation Service, USDA, room 3741, South Agriculture Building, 14th and Independence, P.O. Box 2415, Washington, DC 20013.

The titles and numbers of the Federal assistance programs to which this final rule applies are: Cotton Production Stabilization–10.052; Feed Grain Production Stabilization–10.055; Wheat Production Stabilization–10.058; Rice Production Program–10.065; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since neither the Agricultural Stabilization and Conservation Service ("ASCS") nor the Commodity Credit Corporation ("CCC") is required by 5 U.S.C. 553 or any other provision of the law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, and assigned OMB No. 0560–0004 and 0560–0092. OMB approval for the information collections contained in these rules expires May 31, 1991; however, a request for a 3 year extension from OMB will be submitted.

Public reporting burden for these collections is estimated to vary from 15 minutes to 45 minutes per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project, (OMB No. 0560–0004 and 0560–0092) Washington, DC 20503.

Statutory Background—Food, Agriculture, Conservation and Trade Act of 1990

In the absence of new farm legislation, authority for the upland cotton program reverts to the permanent statutory provisions of the Agricultural Adjustment Act of 1938. The 1938 Act requires that a national marketing quota be announced by October 15 whenever it is determined that the total supply of upland cotton for the marketing year will exceed the normal supply. Normal supply is defined as estimated domestic consumption plus estimated exports plus an allowance of an additional 30 percent for carryover. Based on the latest supply-use estimates at the time, it was determined that total supply of upland cotton would not exceed normal supply. Therefore, on October 15, 1990, a press release was issued announcing that neither a marketing quota nor acreage allotments would be in effect for 1991-crop upland cotton. This program announcement was superseded with passage of the Food, Agriculture, Conservation and Trade Act of 1990.

The Act added sections 101B, 103B, 105B, and 107B to the 1949 Act, effective for the 1991 through 1995 crops of rice, upland cotton, feed grains, and wheat, respectively, and amended section 103(h) of the 1949 Act for the 1991 through 1996 crops of Extra Long Staple Cotton. The Act also provides for the establishment of the Integrated Farm Management Program Option, designed to assist producers of agricultural commodities in adopting integrated, multiyear, site specific farm management plans by reducing farm program barriers to resource stewardship practices and systems. The Act also amended sections 105C, 110, 113, 201, 401, 402, 403, 406, and 408, redesignated sections 107C and 107E as sections 114 and 115. The Act amended section 406(b) of the Agricultural Act of 1949 to provide producers of 1996 crops of wheat, feed grains, upland cotton, Extra Long Staple Cotton, rice, or oilseeds, and to dairy producers for the 1996 calendar year the option to participate in commodity price support, production adjustment, and payment programs.

Section 1102 of the Omnibus Budget Reconciliation Act of 1990 (the "Reconciliation Act") amended sections 107B(c)(1)(B), and 101B(c)(1)(B) of the of 1949 Act, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 to provide for making deficiency payments for the 1994 and 1995 crops of wheat, feed grains, and rice using a weighted average of market

prices received by producers during the entire 12 months of the marketing year. In order to avoid a major change in the timing of deficiency payments, the Act amends section 114 of the 1949 Act to provide for making available 75 percent of the projected final deficiency payment as soon as practicable after the end of the first 5 months of the marketing year.

Subsection 105B(p) of the 1949 Act has been added to provide for an assessment on malting barley producers to help offset costs associated with the change in the calculation of the deficiency rate for barley. The subsection provides for levying an assessment for each of the 1991 through 1995 crop years on producers of malting barley who are participating in the annual production adjustment program. The assessment shall be no more than 5 percent of the value of the malting barley produced on the farm during each of the 1991 through 1995 crop years.

With respect to title XI of the Act, "General Commodity Provisions", the Manager's report specifies that "it is the intent of the Managers that the Secretary exercise his discretionary authority to prohibit the establishment of farm program payment yields based on yields on irrigated acres, as opposed to yields on non-irrigated acres, for any acres not irrigated prior to the 1991 crop year". Section 1147 provides that 1992 program participants complete a survey regarding the redistribution of any crop acreage bases on the producer's farm.

This final rule amends 7 CFR parts 718, 719, and 1413, and adds part 1414, to set forth a number of terms and conditions with which producers must comply in order to be eligible for benefits with respect to various commodity programs for the 1991 and subsequent crops of feed grains, rice, upland and extra long staple cotton, and wheat.

This final rule amends the regulations at 7 CFR part 719 governing the reconstitution of farms, allotments, quotas, base and acreages under the production adjustment and marketing quota programs administered by the Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC). These amendments are necessary to comply with the Food, Agriculture, Conservation, and Trade Act of 1990 and the Farm Poundage Quota Revisions Act of 1990. Specific amendments required because of the Act include: (1) The definition of cropland in § 719.2 as it relates to land converted to water storage uses. See subsection 107B(e)(4)(D), subsection 105B(e)(4)(D), subsection 103B(e)(4)(D), and subsection 101B(e)(4)(D) of the 1949 Act. (2) The definition of producer in § 719.2 as it relates to a person growing hybrid seed under contract. See subsection 1131(b); and (3) the division of farms as it relates to burley tobacco. (b) These amendments are also necessary to improve the administration of programs authorized by the Agricultural Adjustment Act of 1938, as amended, (The "1938 Act") and the 1949 Act.

The provisions set forth in 7 CFR part 718 apply to producer adherence with certain crop acreage, land use, and other requirements, which are used to establish and maintain program eligibility for the 1991 and subsequent crop years. Programs for which producer compliance determinations must be made are those programs authorized by the 1938 Act, and the 1949 Act, with respect to ASCS and CCC programs administered by the ASCS through State and county Agricultural Stabilization and Conservation committees.

This final rule revises 7 CFR part 718 to recognize changes in terminology, land use, requirements, and eligibility conditions for programs modified or changed by the 1985 Food Security Act, as amended, ("the 1985 Act") and the 1990 Act.

Discussion of Comments and Changes

In response to the proposed rule published on February 26, 1991, 2,836 timely filed letters containing 3,004 comments were received. Respondents included the following: 2,805 individuals, 61 farming corporations, 32 commodity groups and similar organizations, 50 seed companies, 11 state agencies, 3 Extension Service members, 29 Soil and Water Districts, 4 ASCS employees, 3 SCS employees, 6 financial institutions, 11 cooperatives, 8 general farm organizations, 8 Members of Congress, and 5 trusts. Comments were received from persons in every state except the following: Alaska, Colorado, Connecticut, Delaware, Maine, Massachusetts, Nevada, New Hampshire, New Jersey, New York, Puerto Rico, Rhode Island, Vermont, Virginia, West Virginia, and Wyoming.

Many producers have already planted 1991 crops and the remaining producers are currently making planting decisions for 1991. Accordingly, in order to ensure that all affected producers are given adequate notice of the final regulations which are applicable to the 1991 crop year, the comment period for the proposed rule was limited to 15 days.

Nineteen comments were received which did not directly relate to the substance of the proposed rules or that made suggestions regarding editorial and grammatical corrections. Numerous minor editorial changes have been made in the text of the regulations for clarity and to facilitate the application of the regulations.

The discussion that follows is organized in the same sequence as the provisions of the final rule.

Section 718.3 Definitions

One comment was received on this section of the proposed rule. The commentator suggested that farm inspections should be an on-site inspection whenever possible, particularly in areas with rolling hills and odd-shaped fields. The commentator suggested that the definition of a field relies on permanent boundaries, and that land coming out of CRP may not have a permanent boundary for such reliance. The commentator also suggested that the definition of required inspection needed further defining. This comment was not adopted because on-site inspections are made when general inspections will not make definitive determinations. Definitions are necessarily general because they are applicable to many different programs.

Section 718.10 State Committee Responsibilities

One comment was received regarding this section of the proposed rule. The commentator suggested that this section be included under the appeals section to avoid errors in rulings that may be made by the State Agricultural Stabilization and Conservation Committee (STC). This comment was not adopted since it was determined that the substance of this section relates to the STC correcting or requiring the county committee to correct any action which is not in accordance with this part, and not in appeals. Further, determinations made by the State ASC Committee which the producer believes is in error may be appealed in accordance with 7 CFR part 780.

Section 718.40 Variance Rules Applicability

The proposed regulations would provide that in determining the acreages of a farm which are devoted to the production of crops or designated as such program requirements as Acreage Conservation Reserve (ACR), that a tolerance factor would be applied. For individual program crop acreage requirements, except for tobacco, tolerance was proposed as the larger of 1.0 acre or 5 per cent of the reported acreage, but not to exceed 10 acres.

Twelve comments have been received on this issue. Eight comments were

received from farm commodity organizations and farm groups, two comments were from producers, and two comments were from Members of Congress. All opposed the change in the maximum tolerance from 50 acres to 10 acres. The typical comment stated that because farm size is increasing, lowering the tolerance percentage would make even quite small percentage measurement errors unacceptable. Several comments expressed concern regarding the ability of the county ASCS offices to timely complete the expected increase in measurement service requests. One farm organization criticized the "no tolerance" provision for reporting acreage in excess of the permitted acreage, asserting the rule encourages producers not to have a measurement service. The intent of acreage reduction programs is to reduce the planting of surplus commodities. By allowing producers the ability to knowingly plant in excess of the permitted acreage established under these programs, the goal of reduced production is not achieved. However, it is recognized that in some instances it is not possible to accurately determine the actual acreage in a field. Accordingly, ASCS provides producers the opportunity to have their fields measured to ensure compliance with the programs. For those producers who do not avail themselves of this opportunity, ASCS and CCC programs provide that a tolerance will be applied. Many producers have, in recent years, knowingly planted crops in excess of the permitted acreage base within the tolerance. In order to prevent the abuse of the program by these producers, it was determined that the maximum tolerance acreage should be reduced from 50 acres per crop per farm to 10 acres. Therefore this portion of the porposed rule is adopted without change.

Section 718.42 Skip rows

Ten comments were received on this section of the proposed rule. Four Members of Congress, four organizations, and two individuals have responded to this part of the proposed rule. The proposed regulations reduced the minimum row width from 32 inches to 30 inches in determining eligible skip-row patterns. Each respondent requested the 1990 requirements be offered as an option to all producers who have prepared cotton acreage for planting based on last year's acreage classification taking 32 inch rules into account when considering the acreage devoted to the crop and the acreage skipped.

Each respondent expressed concern that the regulations have changed the manner in which acreage is determined after farm operating plans, land preparation, and financial arrangements have been made.

In response to the comments it has been determined that for 1991 only, producers will have the option to request acreage classification based on the 64 inch minimum width from plant to plant or the 60 inch minimum width from plant to plant when determining the acreage as skipped or solid planted.

For clarification, § 718.42(a) is amended to provide that if the number of planted rows between skips is greater than 36 rows, this acreage will not meet the definition of "skip Row".

Section 719.2 Definitions

One comment from a farm organization was received on this section of the proposed rule with regard to the terms "in general control" and "control" as the terms relate to the definitions of "operator" and "tenant". The commentator linked these terms to the definition of "actively engaged in the farm operation" which occurs in the payment limitation regulations found at part 1497 of this title. The commentator asked whether a producer is in control if the producer provides more than half of the labor, management, capital risk, or equipment.

There is no correlation between the meaning of the term "in general control" and the meaning of any terms found in the payment limitation regulations. A landowner may be determined by the county committee to retain sufficient control over the land to warrant being considered as the farm "operator" without any implications for payment limitation determinations. Accordingly, no change in these terms is necessary.

After further review of the proposed regulations, the definition of "cropland" has been clarified to include land currently devoted to orchards and vineyards as cropland. The existing regulations provide that cropland that was planted to orchards and vineyards retained its cropland status whereas noncropland that is devoted to orchards and vineyards is not cropland. Since this distinction is not clear in this definition, this change will result in eliminating inconsistency in administering the regulations.

Section 719.6 Substantive change in farming operations, and changes in related legal entities

One comment was received from a farm organization. The comment posed questions of interpretation on this section of the proposed rule regarding reconstitutions and the Integrated Farm Management (IFM) Program. The questions posed are "* * * could a producer signing up for the IFM option face involuntary reconstitution under § 719.6(b) based on changes in the use of land, labor, and equipment. Could a producer have a reconstitution plan approved solely based on his desire to participate in the IFM option? Would the answer be different if the producer was a tenant with two or more landlords, not all of whom agreed with his interest in the IFM?" Participation in IFM, in itself, is not considered a substantive change that requires land to be reconstituted. However, as described in § 719.3(d)(3), a reconstitution is required whenever an owner requests in writing that the owner's land no longer be included in a farm which is composed of tracts under separate ownership.

Section 719.8 Rules for determining farms, allotments, quotas, bases, and acreages when reconstitution is made by division

After further review of the proposed regulations, a determination was made to remove the provision in paragraph (c)(4)(iii) of this section that requires, for upland cotton and rice, that each farm resulting from a reconstitution by division using the designation-by-landowner method receive at least one-tenth acre of these crop acreage bases. This technical correction is necessary because of the change in the manner of the calculations of crop acreage bases for upland cotton and rice as provided in 7 CFR part 1413.

The provision for burley tobacco with regard to the 1,000 pound minimum requirement for resulting farms of reconstitutions in paragraph (i)(3) of this section has been changed by permitting farm reconstitutions by division without applying the 1,000 pound minimum requirement when the division does not involve a sale or change of ownership of the land to more accurately reflect provisions of the Farm Poundage Quota Revisions Act of 1990.

Section 1413.3 Definitions

Comments from 2 respondents were received on this section of the proposed rule. Both commentators were supportive of the zero acreage reports as outlined under considered planted acreage, but suggested that the producer receive planted and considered planted credit for the full crop acreage base of all zero certified and planted crops. Comments further suggest that if after normal calculation of the crop acreage base, the total bases exceed the available cropland for the farm, the

producer should be allowed to adjust the crop acreage bases for any program crop, and if the calculation of bases does not exceed the cropland, the producer should be allowed to increase base acreages. Title V of the 1990 Act specifically provides the manner in which crop acreage bases are calculated. Generally, in order to maintain a crop acreage base the producer must plant the crop in order to receive history credit, or, have acreage such as CU for payment or ACR considered planted to the crop. Accordingly, there is no statutory basis which would authorize the adoption of these comments.

The list of designated ELS counties, as defined in this section, will be expanded to include the following counties: Madera, California and Atascosa, Texas. Comments were received to designate these counties as suitable for the production of ELS cotton.

Section 1413.6 Farm program payment yields

Irrigated/Nonirrigated Yields

Forty-nine comments have been received on the provisions in this section on the issue of irrigated and nonirrigated yields. Forty-two comments were from producers, six comments were from farm organizations, and one comment was from a Congressman. All but one of the public comments opposed the establishment of irrigated acreage maximums and computation of historical weighted yields.

Most of the comments were to the effect "irrigated program yields and base and dryland program yields and base identity would be lost and no longer recognized for record keeping purposes." Under the proposed provisions, ASCS will continue to maintain the farm's irrigated and nonirrigated yields. These yields will be used with the current year's crop acreage base to recompute the historical weighted yield each year to reflect any increase (or decrease) in the crop acreage base from year to year. ASCS will also accept reports of the irrigated and nonirrigated planted acreages.

Many of the comments also mentioned a loss of flexibility for producers who change their plantings between corn and grain sorghum. Because of this concern, paragraph (a)(4)(iii) has been added to the section to provide that, when the operator and owner redesignate all or a portion of a corn crop acreage base as sorghum corp acreage base, or vice versa, that a proportionate share of the irrigated acreage maximum for the crop will also be redesignated. This provision will ensure that producers who have a history of irrigating both corn and grain sorghum are able to redesignate crop acreage base and receive deficiency payments computed using a farm program payment yield on the redesignated crop that reflects their irrigation history.

One comment came from a producer who had already planted irrigated wheat before the proposed rule was published. Because the producer had not irrigated wheat in the past 3 years, the producer would have a historical weighted yield equal to his nonirrigated yield. One producer stated that the producer had already invested in a new irrigated pivot system based on the assumption that he could receive the irrigated yield for the new acreage.

All comments except one suggested that the historical weighted yield and irrigated acreage maximum be eliminated and that the CCC continue, as in past years, to make payments using irrigated payment yield when the farm program payment acreage is irrigated. One comment suggested that the irrigated acreage maximum should reflect the total irrigated acreage on the farm.

The Managers of the 1990 Act specifically stated that "it is the intent of the Managers that the Secretary exercise his discretionary authority to prohibit the establishment of farm program payment yields based on yields on irrigated acres, as opposed to yields on non-irrigated acres, for any acres not irrigated prior to the 1991 crop year." Accordingly, in order to meet this intent the final rule provides that an irrigated acreage maximum will be established for each crop on a farm. However, based upon the comments received and a review of the provisions of the proposed rule it has been determined that changes in the provisions in the proposal are necessary for fair and equitable treatment of affected producers. These inequities include:

(1) Use of the average of 1988–90 acreages is unfair to producers whose history of irrigated acreage of the program crop varied during the period. Such variation occurred because producers switched their irrigable acreage between program crops, or between program and nonprogram crops, or increased or decreased their irrigated acreage based on the availability of water and weather conditions.

(2) Permitting the use of different formulas for different program crops can lead to pyramiding of the irrigated acreage maximum, resulting in the producer who has more than one program crop having a total irrigated acreage maximum in excess of the total irrigable acreage on the farm.

In view of these and other inequities identified in the original proposed rule, the final rule provides that a producer may elect to have an irrigated acreage maximum determined for all crops on a farm by using, at the producer's option, the irrigated acreage on the farm in 1988, 1989, or 1990. The decision as to the crop irrigated acreage maximum made in 1991 shall be final for the 1992–1995 crop years.

The revised provisions of the final rule will be effective for the 1991 programs. All producers will receive final deficiency payments computed using the yields as calculated under the provisions of the final rule.

Actual Yields

Most of the comments received on the irrigated/nonirrigated yield issue went on to state that first-time farmers after 1985 should be afforded the opportunity to prove their yields. The 1990 Act allows for the establishment of farm program payment yields for 1991 based on actual yields for 1986–90 instead of using the 1990 yields. Also, one comment requested that regulations be developed to implement the discretionary authority to establish yields on actual yields.

1986 through 1990 farm program payment yields were established under the provisions of title V as the average of the 1981 through 1985 farm program payment yields. The 1990 Act amended the 1949 Act to continue to allow the establishment of such yields by using the farm program payment yields established for the 1991 through 1995 crops as the average of the 1986 through 1990 yields. By continuing to use the same method of calculation, producers will not be encouraged to alter existing farm practices (e.g. increased water use and fertilizer application) solely to increase farm program payment yields in order to receive increased deficiency payments. Accordingly, it has been determined that such yields will not be established on the basis of actual yields.

Section 505(e) of the 1990 Act authorizes producers to submit data with respect to the actual yield for each farm for each program crop. Such data is required to be maintained for at least 5 crop years after receipt in a manner that will permit the data to be used, if necessary, in the administration of commodity programs.

Although actual yields will not be used in 1991 through 1995, it is still necessary to provide guidelines for submitting production evidence as required by section 505(e). The proposed

rule inadvertently omitted paragraphs from § 1413.6 that provided the rules for determining acceptable production evidence. These rules apply to malting barley certifications in accordance with § 1413.101, ELS cotton farm program payment yields, and yields under the disaster provisions of § 1413.131. The same rules will be applicable to those producers who wish to submit production data in accordance with section 503(e) of the 1990 Act. Accordingly, the final rule includes § 1413.6 (b) and (c), which continue provisions that were in effect for the 1986 through 1990 farm programs.

Section 1413.7 Crop acreage bases

Comments were received from 4 respondents on this section of the proposed rule. Two commentators suggested that cotton and rice crop acreage bases should be established using the provisions of the 1985 Food Security Act. Two commentators felt that any increase in bases should be allowed, if the normal calculation of the base acreages does not exceed the amount of available cropland, and the producer is not participating in an acreage reduction program for that crop. These proposals are not adopted since the 1990 Act amended the 1949 Act to specify that cotton and rice crop acreage bases, generally, will be calculated on a 3 year basis as opposed to a two year basis as provided under the 1985 Act.

Section 1413.10 Adjusting crop acreage bases

Comments from 62 respondents were received on this section of the proposed rule. Three of the comments stated that procedure should be provided to allow equitable crop acreage base adjustments including increases in crop acreage bases when a farm has been adversely impacted by reductions in individual or cumulative crop acreage bases resulting from implementation of provisions of the 1990 Act. One respondent supported the present policy on adjusting the crop acreage bases. Another respondent felt that the base adjustments should be tied closer to the exchange of high residue and low residue crops. One respondent suggested that base adjustments should be tied closer to erosion and soil protection considered when making adjustments. Fifty-two commentators requested that the corn and grain sorghum bases remain as combined bases and allow corn and grain sorghum bases to be freely interchanged without penalty. The 1990 Act amended the 1949 Act to specifically provide that separate crop acreage bases will be established for wheat, corn, oats, grain sorghum, barley, upland cotton, and rice. Accordingly there is no statutory authority to establish a "combined corn-sorghum crop acreage base." However, § 1413.10(b)(2) is revised in order to provide for the fair and equitable treatment of corn and grain sorghum producers by allowing these producers, until the final 1991 certification date for corn or sorghum, to designate corn and sorghum crop acreage as corn or sorghum in order to meet planted and considered planted acreage, ACR for the crop, NFA, and OFA requirements.

Section 1413.11 Planting flexibility

One comment was received on this section of the proposed rule regarding flexibility for 1991 winter wheat planted in the fall of 1990. The commentator suggested that by not allowing winter wheat producers to use the winter wheat option to utilize the flex options provided under this section, winter wheat producers will be at a disadvantage, and would also not be carrying out the intent of the legislation with respect to flexibility. The commentator further suggested that winter wheat producers are penalized by receiving a lower deficiency payment, and could not understand any rationale that would further penalize them. In order to provide equity to producers who had already planted their winter wheat prior to passage of the 1990 Act, the Act allows these producers to have their deficiency payments determined on a 5 month or a 12 month market price basis. Producers who select the 5 month basis will have the maximum payment acreage determined by multiplying the permitted wheat acreage by 85 percent. Producers who elect the 12 month basis will have the maximum payment acreage determined by using the maximum permitted acreage. Accordingly, there is no statutory basis which allows the calculation of such payments in any other manner, and, therefore, the recommendations of the commentator are not adopted.

Crops Prohibited on Flex Acreage

A total of 187 respondents commented on crops that may not be planted on flexible acres. More than half of the respondents—118 were producers. The remaining respondents were producer and farm organizations, 34; agribusiness, 12; State and local Government officials, 9; Congressional members, 6. The balance of the respondents were from banks, cooperatives, State water advisory boards, and universities.

Overall, two hundred two comments were received. Two comments were received which recommended no additional crops be added to the list of prohibited crops. The following comments were received on specific crops: 97 comments requesting that peas and beans (including peas and lentils) be permitted on flex acres and 2 comments requesting that such crops not be permitted on flex acres; 34 comments requesting that wild rice not be permitted, one comment requesting that such crop be permitted on flex acres; 10 comments requesting that tobacco not be permitted; 9 comments requesting that peanuts not be permitted; 2 comments requesting that food corn be permitted; 2 comments requesting that popcorn not be permitted; and 5 comments requesting that sugar beets be permitted on flex acres.

Four comments received requested that alfalfa not be permitted on flex acres and two comments to permit alfalfa. Two comments were received to not permit haying and grazing of forage crops. One comment was received on crambe and confectionery sunflower and three comments on sesame requesting they be permitted on flex acres.

One comment for each of the following fruits and vegetables was received requesting that they be added to the prohibited crop list: Crabapples, prunes, mandarins, tangors, raisin, cherimoyas, feijoas, cardoon, chayote, chinese water chestnuts, chives, daikon, garlic, horseradish, rapini, rhubarb, tomatillo, process cabbage, process tomatoes, ornamental vegetables and mushrooms.

The decision to include or prohibit crops on flex acres was based on careful consideration of the comments received from respondents and the statutory language of the 1949 Act.

Since peas and lentils are vegetables, there is no statutory basis to allow the planting of such crops on flex acres. However, peas and lentils will be, for 1991 only, Approved Nonprogram Crops (ANPC) which will allow producers to receive planted and considered planted credit for such acreages as program crop acreage. However, such history shall be limited to 20 percent of the program crop acreage base. This determination was made since many program crop producers, primarily wheat and barley producers, have already made 1991 planting decisions on the basis of existing conservation compliance plans, which took into consideration 1990 planted and considered planted procedures, which allowed up to 20 percent of a program crop acreage base which was planted to peas and lentils to be considered planted to such program crop. Adzuki beans, faba beans, and lupin beans were designated as

experimental crops. Comments received indicated that no substantial market exists for these legume crops and their production is in a very limited area. All other beans will be prohibited as a result of their classification as a vegetable.

The production of wild rice on flex acres will be prohibited due to the volatility of the specialty market that currently exists for wild rice. Responses indicated that allowing the production of wild rice would adversely affect farm income, therefore, the decision was made to prohibit the production of wild rice on flex acres.

A decision was made to prohibit the production of tobacco and peanuts on flex acres after reviewing the comments from respondents. The production of such crops on flex acres would be considered planted to the program crop and would also receive planted credit as tobacco and peanuts. Therefore, tobacco and peanuts will not be allowed on flex acreage to prevent the same acreage from being considered planted to two crops.

Corn used to produce flour, which is classified as food corn, is considered to be a program crop and will be permitted on flex acres. Program crops are permitted on flex acres. Popcorn will be allowed on flex acreage as a result of the Managers language that states "for the purposes of this Act, popcorn, as a field crop, may not be considered to be a vegetable."

The list of prohibited crops published in the February 15, 1991 **Federal Register**, listed beets as a prohibited crop. Comments received from respondents were in favor of allowing the production of sugar beets, and they further requested that beets, as listed on the published list, be further clarified to read beets, other than sugar.

The decision was made to permit the production of alfalfa and hay/graze forages on flex acres, since these crops are not fruits or vegetables. Crambe, confectionery sunflower, and sesame are not fruits or vegetables and therefore, are also eligible to be produced on flex acres.

The decision was made to permit the production of all herbs on flex acres. These crops are considered to be used for enhancing foods and therefore, are not considered to be fruits or vegetables.

Processed vegetables, including cabbage and tomatoes, are vegetables and will not be permitted on flexible acres. Ornamental fruits and vegetables are considered to be fruits and vegetables and will not be permitted on flexible acres. Nuts and trees are not permitted on flex acres.

A decision was made to include the following fruits and vegetables on the prohibited list: crabapples, prunes, mandarins, tangors, raisin, cherimoyas, feijoas, cardoon, chayote, chinese water chestnuts, daikon, rapini, rhubarb, and tomatillo. These crops were determined to be fruits or vegetables and therefore, will be added to the list of prohibited crops.

CCC intends to permit all other crops, except the list of prohibited crops, to be grown on flexible acreage. The planting of fruits and vegetables is allowed only if used for green manure, haying, or grazing.

Accordingly, 7 CFR 1413.11 is revised to include the following final list of crops that are prohibited on the flexible acreage for the 1991 and 1992 crops:

Fruits and Vegetables

Unless used for green manure, grazing, or haying: Apples, apricots, arugala, artichokes, asparagus, avocados, babaco papayas, bananas, beans (except soybeans, adzuki, faba, and lupin), beets—other than sugar, blackberries, blueberries, bok choy, boysenberries, broccoli, brussel sprouts, cabbage, calabaza, cauliflower, celeriac, celery, chayote, cherimoyas, canary melon, cantaloupes, cardoon, carrots, casaba melon, cassava, cherries, chinese bitter melon, chicory, chinese cabbage, chinese mustard, chinese water chestnuts, chufes, citron, citron melon, coffee, collards, cowpeas, crabapples, cranberries, crenshaw melon, cucumbers, currants, daikon, dasheen, dates, eggplant, elderberries, endive, escarole, feijoas, figs, gooseberries, grapefruit, grapes, guavas, honeydew melon, huckleberries, jerusalem artichokes, kale, kiwifruit, kohlrabi, kumquats, leeks, lemons, lentils, lettuce, limequats, limes, loganberries, loquats, mandarins, mangos, marionberries, mulberries, murcotts, mustard greens, nectarines, olallieberries, onions, oranges, okra, olives, papaya, paprika, parsnip, passion fruits, peaches, pears, peas, all peppers, persimmon, persian melon, pineapple, plantain, plumcots, plums, pomegranates, potatoes, prunes, pumpkins, quinces, radiochio, radishes, raisins, rapini, raspberries, rhubarb, rutabaga, santa claus melon, salsify, savory, shallots, spinach, squash, strawberries, Swiss chard, sweet corn, sweet potatoes, tangelos, tangerines, tangos, tangors, taniers, taro root, tomatillo, tomatoes, turnips, turnip greens, watercress, watermelons, white sapote, yam, yu choy.

Other Crops

Peanuts, tobacco, wild rice, trees, tree crops, and nuts.

Section 1413.50 Contracting procedures

One comment was received on this section of the proposed rule. The commentator suggested that any traditional winter wheat producer who was prevented from planting winter wheat in the fall of 1990 for harvest in 1991 because of drought conditions should be eligible for this winter wheat provision. It was suggested that the winter wheat provision be available to any producer who planted winter wheat in 1990 or who is in a county that normally grows winter wheat. The commentator stated that producers in his area seeded less winter wheat in the fall of 1990 simply because of a lack of growing moisture, or in some cases, for other management reasons. For clarification, § 1413.50(a)(5) is amended to include the provision that a farm is eligible as a winter wheat farm if at least 0.1 acre of winter wheat was planted in 1990, or the acreage was prevented from being planted and winter wheat had been planted on the farm in at least one of the previous 3 years. A prevented planting claim must have been filed before February 7, 1991.

Section 1413.54 Acreage reduction program provisions

In response to the proposed rule published on February 28, 1991 relating to § 1413.54, seven letters containing eleven comments were received. The respondents included: 1 farm organization, 1 bank, 1 agribusiness, 2 commodity groups, 2 breweries.

Two timely comments were received which related to Targeted Option Payments (TOP), two comments on planting on ACR, five comments on the malting barley exemption, and two comments on the paid land diversion (PLD).

Targeted Option Payments

Two timely comments were received which suggested that CCC implement TOP. These recommendations were not adopted because it was determined that producers already have a broad range of flexibility choices under triple base, the optional 10-percent "flex" and "0/92" and "50/92" provisions. Annual determinations will be made for the 1992–95 crops to determine if the TOP program is necessary.

Planting on Acreage Conservation Reserve (ACR)

Two timely comments were received which suggested that CCC allow planting of crops on ACR. The decision was made not to allow the planting of oilseeds, industrial, experimental, oats or any other crop for the 1991 crops. This decision is a result of the flexibility choices already available to producers through the triple base, optional 10-percent flex, and the "0/92" and "50/92" provisions and also expectations of minimal participation in these programs resulting from producers not wanting to further reduce deficiency payments. These programs will be evaluated annually for the 1992–95 crop years to determine if they are necessary.

Malting Barley Exemption

Four timely comments received on the malting barley exemption were to make an annual determination for the exemption from ARP requirements. One comment, for the 1991 crop determination, was to not exclude malt from the 1991 crop. The decision was made to not exclude malting barley from the 1991–95 crops. This decision continues the long standing policy of not exempting malting barley from acreage reduction program (ARP) requirements. (The exemption has only been imposed twice since 1961 (1962 and 1965).) This decision also took into account the complaints of program inequity from feed barley producers that would result from implementing the exemption. However, this decision will be considered if conditions warrant a change.

Paid Land Diversion (PLD)

Two comments were received on this provision, one to implement PLD's and one opposed to implementing PLD's. PLD's will not be implemented for the 1991 crops. The ARPs for the 1991 crops are sufficient to balance supply and demand. A PLD will be evaluated annually for the 1992–95 crops to determine if they are necessary.

Double-cropping On "0/92" and "50/92" Acreage

A total of 77 comments were received in favor of double-cropping: 57 comments from producers; 13 comments from agribusinesses; 4 comments from universities; one comment from a farm organization; and two comments from other sources. One comment from a producer was opposed to double cropping. Double-cropping rules for CU for payment for the 1991–95 crops will remain unchanged from 1990 because CU for payment must be maintained in an approved cover through the end of the calendar year. Not permitting double-cropping would also enhance the conservation benefits of "0/92" and "50/92" acres. If producers wish to double-crop, they have the opportunity to do so on flex acres and pursuant to zero acreage certification provisions of the 1990 Act.

Since sections 105B and 107B of the 1949 Act authorize the planting of specified minor oilseeds on acreage designated for 0/92 payment under the feed grain and wheat acreage reduction programs, doublecropping of minor oilseeds with other minor oilseeds will be permitted. Accordingly, § 1413.54 is revised to reflect this decision.

Planting of Industrial and Other Crops on "0/92" and "50/92" Acreage

Over 200 comments were received requesting that CCC allow the planting of industrial and other crops on 0/92 and 50/92 acreage. Sources of the comments in favor of this decision included: 128 producers; 31 agribusinesses; 9 Congressional; 9 State farm organizations; 9 universities; and one producer association. Comments from three State farm organizations requested that such planting not be allowed. The planting of industrial and other crops on such acreage will not be allowed for the 1991–95 crops since producer flexibility under the new provisions of the 1990 Act generally provides sufficient acreage for the planting of such crops.

Minor Oilseeds Eligible for Planting on 0/92

A total of 13 comments were received concerning the planting of "other minor" oilseeds on 0/92 acreage: 9 comments were in favor of allowing various oilseeds on 0/92 acres and 4 comments opposed the planting of other oilseeds on 0/92 acres. The 0/92 provisions of the wheat and feed grain provisions of the 1990 Act authorizes the planting of sunflowers, rapeseed, canola, safflower, flaxseed, mustard seed and any other minor oilseeds designated by CCC (excluding soybeans). No other oilseeds were designated to be eligible for planting on 0/92 since sufficient supplies of such crops have been determined to exist without such a designation, further, other oilseeds may be grown in sufficient amounts on the normal and optional flex acres.

Section 1413.61 Eligible land

Comments were received from 346 respondents concerning this section of the proposed rule. Of these, 335 comments related to the minimum size and width requirements for ACR of 5.0 acres and 1.0 chain. The respondents were opposed to the requirements in that in many cases areas smaller than this had been seeded into permanent cover as part of the conservation plan. Seven respondents requested that the acreage presently designated as ACR would still be eligible for this designation after 5 years. Two respondents suggested that strip cropping of 30 feet more or less be allowed to be designated as eligible ACR. In response to these comments the final rule at §1413.61(b) is revised to provide that the following may be designated as ACR. (1) Contiguous and noncontiguous strips, including endrows, that are part of an approved conservation plan, which do not meet the minimum size (5.0 acres) and width (1.0 chain or 66 feet) will be eligible if they are at least 33 feet wide; and, (2) Contiguous and noncontiguous strips, including endrows, that are planted in perennial cover and are at least 33 feet wide are eligible for ACR designation. Further, for 1991 only, § 1413.61(b) provides that the following may be designated as ACR that do not meet the above stated minimum size and width requirements: (1) Land between terraces (terrace to terrace) or between a terrace and other field boundaries; (2) Land which will be used to promote highway safety or will improve highway scenery; (3) Land between rows of trees, drip area to drip area, in orchards; (4) the area designated is terraces or erosion control strips at least 160 inches wide established on highly erodible land, if required by the conservation plan; and (5) wildlife food plots and habitat. Generally, the ACR provisions are designed to ensure that acreage which is designated as ACR would have been cropped in the absence of the program. These changes will allow producers more flexibility in meeting conservation plans and will also provide an additional year in which to prepare for meeting 1992 ACR requirements.

Section 1413.63 Approved cover crops and practices

Comments were received from 117 respondents on this section of the proposed rule, of which, 91 respondents were opposed to the mandatory cover requirements for 50 percent of the required ACR. One respondent requested clarification on why South Dakota, as an arid area, was exempt from the cover requirements. One respondent commented that producers enrolling in the multiyear cover program be required to designate the acres that are seeded to a perennial cover as ACR in the year they enroll plus 3 additional

years. Four respondents requested that the final seeding date of June 1 be changed to a later date, or let the States set the final seeding date. One respondent suggested that the counties be allowed to designate the arid areas within the county. One respondent suggested that the summer fallow option be kept as an alternative to the cover requirement. One respondent suggested that crop residue be kept as an eligible summer fallow cover on ACR. One respondent requested clarification on why soybeans were not an eligible cover crop. Two respondents requested that volunteer wheat or other grains be allowed as a permitted cover crop. One respondent suggested that county committees be given the authority to waive ACR cover requirements if a State noxious weed program is being carried out. One respondent requested that the plains states be exempt from the mandatory cover crop requirements. One respondent requested that the cotton belt states be exempt from the mandatory cover requirements and the producers in these states be notified immediately. One respondent suggested that in arid areas excluded from establishing a permanent cover, if producers can establish a permanent cover capable of improving water quality and wildlife habitat, they should be allowed to utilize the cost-sharing assistance provisions. One respondent requested that permanent cover that had been established in the preceding year meet the 50 percent cover requirement. One respondent suggested that the 50 percent cover requirement be raised to a higher percentage. One respondent suggested that all headlands in the fields be seeded, particularly those running up and down hillsides. Four respondents suggested that volunteer stands of native grasses and soybeans be eligible covers to fulfill the 50 percent cover requirement. Section 101B, 103B, 105B, and 107B of the 1990 Act specifically require that a producer participating in the rice, upland cotton, feed grains, and wheat acreage reduction programs plant to an annual or perennial cover 50 percent (or more at the option of the producer) of the acreage that is required to be removed from the production of the crop; however, this requirement does not apply to arid areas including summer fallow areas. In order to be more responsive to planting conditions within individual states, § 1413.63(a)(5) is amended to permit the State ASC committees to establish the final seeding dates for planting covers on ACR. For clarification, § 1413.63(c)(2)(iii) is added to specify that fruits and vegetables shall not be allowed on land that is designated as ACR or CU for payment if such fruits or vegetables are not allowed on flex acres. The 1990 Act specifically provides the manner in which cover crops are required, what covers are eligible, and the cost share requirements. Accordingly, there is no statutory authority which would authorize the adoption of the other comments.

Section 1413.64 Use of ACR acreage

Comments from 3 respondents were received on this section of the proposed rule. All respondents requested that irrigated alfalfa not be excluded from haying and grazing during the 5 month period established by the State committee in the event of an emergency use declaration. Sections 101B, 103B, 105B, and 107B of the 1990 Act allow the Secretary to exclude the haying and grazing of irrigated alfalfa which has been designated as ACR. This determination was made in order to ensure that traditional alfalfa producers are not adversely affected by the haying and grazing of this additional alfalfa acreage. Accordingly these comments are not adopted. In addition, § 1413.64(c) is clarified to specify that the harvesting of fish is not permitted during the 5 month period established by the State committee.

Section 1413.72 Skip rows

Comments were received from 4 respondents on this section of the proposed rule. The comments all requested that the provisions for skip row practices be changed back to the provisions of the 1985 Food Security Act. They were concerned that the new provisions were too restrictive. In order to alleviate the concerns of producers who have already made planting preparations for 1991, the final rule provides that, for 1991 only, the size and width requirements for CU do not apply. However, for 1992, provisions in the proposed rule are adopted because the Act provisions are designed to ensure that acreage which would have been cropped in the absence of the program is the acreage which is designated as skip row under the acreage production programs. For clarification, § 718.42(a) is amended to provide that if the number of planted rows between skips is greater than 36 rows, this acreage will not meet the definition of "skip row".

Section 1413.79 Eligible CU for payment land

Comments from 5 respondents was received in regard to this section of the proposed rule. 1 respondent requested that the eligibility requirements for CU for planted and considered planted acreage requirements be the same as the ACR and CU for payment requirements. Two respondents opposed allowing wheat and rye to be planted on CU acres. Two respondents opposed having the same requirements for eligibility for CU for payment as ACR. Commentators also suggested that acreage that has been designated as CU for planted and considered planted purposes in 1 of the last 5 years also be eligible as ACR and CU for payment. In order to provide more flexibility to producers, § 1413.79(b)(1) is revised to provide that the following may be designated as CU for payment acreage: (1) Contiguous and noncontiguous strips, including endrows, that are part of an approved conservation plan, which do not meet the minimum size (5.0 acres) and width (1.0 chain 66 feet) are eligible if the strips are at least 33 feet wide; and, (2) Contiguous and noncontiguous strips, including endrows, that are planted in perennial cover and are at least 33 feet wide. In order to have consistency between all program provisions and so that producers will have more uniform program provisions, that part of the proposed rule which treats ACR and CU for payment eligibility requirements the same is adopted. In order to alleviate the concerns of producers who have already made planting preparations for 1991, the final rule provides that, for 1991 only, the size and width requirements for CU for payment do not apply. Wheat and rye planted on CU acres cannot be harvested, as prior rules have stated. There is no statutory authority for the other proposed comments and therefore the proposals are not adopted.

Section 1413.101 General payment provisions

A Comment was received from one farm group. The respondent questioned ASCS's authority to offset final diversion or deficiency payments. Currently, when final diversion or deficiency payments are computed for 2 or more crops on the same farm, in the same cycle of payments, and a payment is owed to a producer on 1 crop and a refund of unearned payment is due from a producer on another crop, County Offices may offset the refund amount from the payment due amount and provide the producer with an explanation of the payment calculations and the basis for reductions.

Offsets are currently done in accordance with 7 CFR part 1403. In response to the comment received, CCC and ASCS have determined that before any offset is made under one program for another program overpayment, the

producer will be notified that such action will be taken. Accordingly, § 1413.101(g) has been removed from the final rule.

Section 1413.109 Timing and calculation of deficiency payments

Two comments were received from grain grower associations that suggested the December payment for 1991 winter wheat and 1994 and 1995 wheat and feed grain be calculated by subtracting the advance payment from the projected final deficiency payment, and multiplying the result times 75 percent. These comments are contrary to section 114(c) of the 1949 Act, which states that "Seventy-five percent of the final projected deficiency payment for the crop, reduced by the amount of the advance, shall be made available * * *". For this reason, this section of the proposed rule is adopted without change.

Section 1413.110 Malting barley

Comments were received from one malting company and four grain grower associations. A respondent requested that the definition of malting barley be barley sold for malting at a premium greater than the assessment. A respondent requested the assessment not be applied, and 2 respondents requested that if the assessment is applied, the state average market price of non-contracted malt barley be used to determine the amount of the assessment. A respondent supported applying the assessment according to the percent of the total production marketed for malting purposes when the total production is less than the deficiency production or when part of the production failed or was used for feed purposes.

The average market price for all malting barley is considered to determine the basis for the assessment and is consistent with the present definition of malting barley.

The proposed regulations provided for an assessment for each of the 1991 through 1995 crop years to be levied on producers of malting barley that are participating in the production adjustment program. The statutory formula for use in calculating barley deficiency payments is expected to increase outlays by about $55 million. The malt barley assessment will offset about 12 to 15 percent of this increase and is consistent with the intent of the 1990 Act. Accordingly, the assessment percentage will be set at 5 percent instead of zero.

Changing the assessment to exclude contracted malt barley is not feasible in that such prices are not readily available. Accordingly this suggestion is not adopted.

The proposed regulations provided for the assessment to be applied to the total deficiency production in malting barley counties except if the producer certifies and furnishes acceptable proof that (1) all production failed or was used for feed purposes, no assessment will be applied, or (2) if part of the production failed or was used for feed purposes and part of the production was sold for malting purposes, the assessment will be applied to the production sold for malting purposes, not to exceed the total deficiency production.

In developing the proposed rule the question of using a percentage instead of "bushel production" was considered. Applying the assessment to the bushels of malting barley actually produced means that the assessment will, in some cases, be less than if a percentage was used. For example, if the producer's deficiency production for payment is 10,000, and the actual barley production was 1,000 bushels of malting barley, applying a percentage would mean assessing the entire 10,000 bushels. If the total production is more than the deficiency production and some production is used for feed, it is not unfair to the producer to apply the assessment to the production marketed for malting purposes not to exceed the deficiency production.

For the above reasons, this section of the proposed rule is adopted without change.

Section 1413.111 Division of payments

Comments were received from 2,238 respondents regarding this section of the proposed rule. All commentators vigorously opposed the proposed rule regarding seed company contributions to the production of hybrid seed corn. The commentators felt that the proposed rule would seriously harm seed growers throughout the country, and also felt that the interpretation was inconsistent with historical practices that ASCS had employed relative to seed producers in the past. After further review, § 1413.111(b)(4) has been amended to only consider those operations not unique to the production of hybrid seed corn when making determinations as to contributions by a seed company that would reduce the grower's share of payments. Operations or inputs designated as unique to the production of hybrid seed corn shall include, but not be limited to: providing seed, specialized harvesting, detasseling, roguing, paying crop insurance premiums, providing special pesticides, specialized drying, application of special pesticides, pollination enhancement, and split planting reimbursement.

Integrated Farm Management Program

Section 1414.1 General description of the program

Comments were received from 16 respondents on this section of the proposed rule. All respondents believed that by requiring producers to enroll 20 percent of all crop acreage bases the program was less appealing than requiring the enrolling of only one crop acreage base. Seven respondents specifically stated that producers lose flexibility due to the 20 percent base requirement. Four respondents suggested that producers be allowed to enroll bases in small increments over the life of the contract in order to allow for an easier transition into the IFM. They also suggested that few producers would enroll into a program that has an "all or nothing" approach. Five respondents believed that the proposed rule was in direct conflict with Congressional intent, and that it did not follow the legislative history or the letter of the law.

In developing the proposed rule, every attempt was made to be fair and equitable concerning the amount of acreage required to enroll in the IFM program. It was determined that producers could more effectively ensure maintenance or enhancement of the overall productivity and profitability of the farm if 20 percent of all crop bases were required to be enrolled. Further, since the concept of the IFM is that it is an "integrated" program, there is no basis to allow only the enrollment of one program crop acreage base in the IFM program.

For the above discussed reasons, this section of the proposed rule is adopted without change.

Section 1414.6. Acreage enrollment

A total of 45 comments were received on this section of the proposed rule, of which, thirty-seven respondents stated that the proposed rule did not follow the intent of Congress, and limited producer participation by only allowing enrollment of 3 million total acres for the calendar years 1991 through 1995. Several respondents suggested that 5 million acres be allowed for each calendar year 1991 through 1995. Many commentators also suggested that producers wanting to make a stronger commitment to conservation and environmental goals would be unnecessarily left out of the program because of the limited number of acres allowed in the proposed rule. One

respondent stated that limiting IFM sign-up to 3 million acres would set up a competitive situation between states and between producers wishing to make a transitional move to more environmentally-sound production. Eight comments were received concerning the ranking criteria. Some respondents disagreed with the ranking criteria, and others believed that ranking criteria would not be necessary to rank if more acres were allowed to be enrolled. The original Senate provision relating to IFM specifically provided acreage goals for each of the 1991 through 1995 fiscal years. However, as enacted, section 1451 of the 1990 Act specifically limits the program enrollment to "not less than 3,000,000, nor more than 5,000,000 acres in the calendar years 1991 through 1995". Accordingly these acreage limits are determined on an aggregate basis and not on an annual basis.

In order to provide flexibility to producers, § 1414.6 of the proposed rule has been changed to allow that 3 to 5 million acres be enrolled in the program over the calendar years 1991 through 1995. This section has also been clarified with regard to the criteria to be used in assessing IFM bids.

Section 1414.12 Resource-conserving crops on ACR

Comments were received from 21 respondents regarding the haying and grazing provisions in this section of the proposed rule. All respondents believed that the final rule should restore the ability of participants to hay or graze up to 50 percent of ACR year-round and without restriction. Several commentators suggested that the proposed rule clearly ignored the intent of the Managers with respect to haying and grazing requirements. Many comments suggested that producer participation would increase if haying and grazing were allowed.

Comments were also received from 32 repondents regarding harvesting of small grains (other than barley, oats, and wheat) on resource-conserving crops designated as ACR. Several respondents believed that Congress intended that harvesting be allowed, and that by eliminating this option producers would not be allowed to make full use of any alternative feed or food grains they wish to plant as part of their resource-conserving crops.

Accordingly, because of the many comments received, § 1414.12(c) of the proposed rule has been changed to allow 50 percent of the RCC acreage designated as ACR to be hayed and grazed during the entire year. Section 1414.12(e) has been added in the final rule of allow small grains (other than barley, oats, and wheat) that are part of resource-conserving crops on ACR to be harvested.

List of Subjects

7 CFR Part 718

Acreage allotments, Marketing quotas, Reporting and recordkeeping requirements.

7 CFR Part 719

Acreage allotments, Marketing quotas, Reporting and recordkeeping requirements, Cotton, Feed grains, Wheat, Rice.

7 CFR Parts 1413 and 1414

Cotton, Feed grains, Price support programs, Wheat, Rice.

Accordingly, the regulations set forth in chapters VII and XIV of title 7 of the code of Federal Regulations are amended as follows:

CHAPTER VII—[AMENDED]

1. Part 718 is revised to read as follows:

PART 718—DETERMINATION OF ACREAGE AND COMPLIANCE

Subpart A—General Provisions

Sec.

Subpart B—Responsibilities and Authority

Subpart C—Measurements, Reporting and Inspections

Subpart D—Tolerances, Variances, and Adjustments

Authority: 7 U.S.C. 1153, 1314, 1373, 1374, and 1375; 15 U.S.C. 714b and 714c.

Subpart A—General Provisions

§ 718.1 Paperwork Reduction Act assigned number.

Information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35, and assigned OMB No. 0560–0004 and 0560–0092. OMB approval for the information collections contained in these rules expires May 31, 1991; however, a request for a 3 year extension from OMB will be submitted.

§ 718.2 Applicability.

The provisions of this part apply to compliance determinations for the 1991 and subsequent crop years as authorized by the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended, and the Commodity Credit Corporation Charter Act, as amended, with respect to the programs administered by the Agricultural Stabilization and Conservation Service, ("ASCS"), through State and county Agricultural Stabilization and Conservation ("State and county committees") committees.

§ 718.3 Definitions.

(a) *General.* As used in this part, and in all instructions, forms, and documents issued in connection therewith, the words and phrases defined in part 719 of this chapter and parts 1413, and 1414 of this title shall have the meanings so assigned and the terms defined in paragraph (b) of this section shall have the meanings so assigned, unless the text or subject matter otherwise requires.

(b) *Other terms.*

Acreage maintenance inspection. An inspection of conservation reserve program (CRP) acreage as defined in part 714 of this chapter, or acreage conservation reserve (ACR) made to determine whether producers are continuing to maintain designated program acreages in accordance with program regulations.

Administrative variances (AV). The amount by which the determined acreage may exceed the effective allotment and be considered in compliance with program regulations. AV applies only to marketing quota crops.

Aerial compliance. A technique for determining acreage and updating aerial phtography using 35mm slides and approved equipment.

Allotment crop. Any crop for which acreage allotments are established

pursuant to regulations of the Department implementing Federal law.

Crop reporting and disposition dates. Dates established by Deputy Administrator, State and County Operations, (Deputy Administrator) ASCS, representing:

(i) The final date to report crop acreages and,

(ii) The final disposition date to dispose of excess crop acreages. Crop disposition dates shall be no later than established crop reporting dates.

Determined acreage. That acreage established by a representative of the Department of Agriculture by use of official acreage, digitizing or planimetering areas on the photograph, or other photographic image or computations from scaled dimensions or ground measurements.

Director. The Director, Cotton, Grain, and Rice Price Support Division, ASCS, Department of Agriculture.

Farm inspection (spot-check). An inspection by an authorized ASCS representative using aerial or ground compliance to determine the extent of producer adherence to program requirements.

Field. A part of a farm which is separated from the balance of the farm by permanent boundaries such as fences, permanent waterways, woodlands, and croplines in cases where farming practices make it probable that such cropline is not subject to change, or other similar features.

Field assistant. Person employed by ASCS to secure data necessary to ascertain producer adherence to requirements for receiving program benefits as set forth in this chapter and chapter XIV of this title.

Ground compliance. A mentod for determining acreage and updating aerial photography using field visits.

Ground measurement. The distance between 2 points on the ground, obtained by actual use of a chain tape, or other measuring device, that is expressed in chains and links.

Intended acreage. A crop that has not yet been planted on the field or subdivision of a field but will be planted later.

Measurement after planting. Determining a crop or designated acreage after planting but before the farm operator files a report of acreage for the crop or land use.

Normal planting period. That period, established by the State committee and approved by the Deputy Administrator, during which the crop is normally planted in the county, or area within the county, with the expectation of producing a normal crop.

Normal row width. The normal distance between rows of the crop in the field, but not less than 30 inches (approximately 3.8 links) for all crops.

Official acreage. That established acreage for fields and subdivisions that is entered and maintained on aerial photography.

Photocopy. A reproduction of a portion of an aerial photographic enlargement, showing a farm or farms.

Random inspection. An examination of a farm by an authorized representative of ASCS selected as a part of an impartial sample to determine the adherence to program requirements or to verify the farm operator's crop acreage or land use report.

Reported acreage. The acreage furnished by the farm operator, farm owner or a properly authorized agent on a form prescribed by the Deputy Administrator.

Reporting date. The date established by the Deputy Administrator by which the farm operator, farm owner, or properly authorized agent must report applicable crop acreage.

Required inspection. An examination by an authorized representative of ASCS of a farm specifically selected by application of prescribed rules to determine the producer's adherence to program requirements or to verify the farm operator's, farm owner's, or properly authorized agent's report.

Skip-row or strip-crop planting. A cultural practice in which strips or rows of the crop are alternated with strips of idle land or another crop.

Staking and referencing. Determining an acreage before planting, designating, or adjusting by:

(i) Measuring a delineated area on photography or computing the chains and links from ground measurement and sketching the field or subdivision of a field.

(ii) Staking and referencing the area on the ground.

Standard deduction. An acreage that is excluded from the gross acreage in a field because such acreage is considered as being used for farm equipment turn-areas. Such acreage is established by application of a prescribed percentage of the area planted to the crop in lieu of measuring the turn area.

Subdivision. A part of a field that is separated from the balance of the field by temporary boundary such as a cropline which could be easily moved or will likely disappear.

Tolerance. For program crops, marketing quota crops, and peanuts, a prescribed amount within which the reported acreage may differ from the determined acreage and still be considered as correctly reported. Also, for conserving uses (CU) acreage and acreage conservation (ACR) acreage as defined in part 1413 of this title, the prescribed amount within which the determined acreage may be less than the program requirement and still be considered as having met the program requirement.

Turn-area. The area across the ends of crop rows which is used for operating equipment necessary to the production of a row crop (also called turnrow, headland, or endrow).

Variance. Administrative variance as it applies to marketing quota crops and tolerance as it applies to program crops, marketing quota crops, poundage quota crop, conserving use and ACR.

Verification of acreage. The use of whatever means necessary to verify that the planted acreage of a crop or land use is accurately reported and meets program requirements.

Zero acreage. When no acreage of a crop is planted on the farm for the current year, but a crop acreage base, marketing quota crop, or poundage quota crop exists on the farm.

Subpart B—Responsibilities and Authority

§ 718.10 State committee responsibilities.

(a) The State committee shall, with respect to county committees:

(1) Take any action required of the county committee which the county committee fails to take in accordance with this part.

(2) Correct or require the county committee to correct any action taken by such committee which is not in accordance with this part.

(3) Require the county committee to withhold taking any action which is not in accordance with this part.

(4) In accordance with instructions issued by the Deputy Administrator, establish:

(i) Disposition dates for crops that are no later than the applicable final reporting dates established by the Deputy Administrator,

(ii) Normal planting periods for crops,

(iii) A prescribed method for publication of all such applicable dates and periods.

(5) Review county office rates for producer services to determine equity between counties.

(6) Determine, based on cost effectiveness, which counties will use aerial compliance methods and which counties will use ground measurement compliance methods.

(b) The State committee shall submit to the Director requests to deviate from

National Standards prescribed in this part by establishing a minimum:

(1) Row width of less than 30 inches (approximately 3.8 links),

(2) Area larger than 0.03 acre for tobacco or 0.1 acre for other crops and land uses for deduction or adjustment credit;

(3) Width greater than 30 inches (approximately 3.8 links) for deduction of adjustment credit;

(4) Error amount or percentage different from those prescribed in § 718.47(b) of this part for redetermination cost refunds.

(c) The following deviations from prescribed standards pursuant to paragraph (b) of this section have been recommended by the State committee and approved by the Deputy Administrator:

California

Deduction credit.

(1) Minimum area. Five-tenths acre for all crops.

(2) Minimum width.

(i) Perimeter of field. Ten links for all crops.

(ii) Within the planted area.

(A) Row crops. Four normal rows except when planted in a skip-row pattern.

(B) Close-sown crops. Twenty links.

Delaware

Deduction credit. Minimum width six links.

Georgia

Redetermination refund. One-tenth acre.

Indiana

(1) Deduction credit. Minimum width of five links except 15 links for terraces, permanent irrigation, drainage ditches, and sod waterways.

(2) Adjustment credit.

(i) Minimum area. Five-tenths acre for all crops and land uses except tobacco.

(ii) Minimum width. Five links.

(3) Redetermination refund. One-tenth acre for tobacco.

Iowa

Deduction credit.

(1) Minimum width. Seven links.

(2) Minimum area. Five-tenths acre.

Louisiana

Deduction credit. Unplanted contour levees within rice fields are not eligible for deduction.

Mississippi

(1) Deduction credit. Minimum width of 10 links.

(2) Adjustment credit.

(i) Minimum area. Total excess or deficiency or 0.3 acre, whichever is smaller, except that if the excess or deficiency is more than 0.3 acre, one plot may be less than 0.3 acre.

(ii) Minimum width. Twenty links.

Missouri

Deduction credit. Minimum width of ten links.

Nebraska

(1) Deduction credit.

(i) Minimum area for all crops is 0.2 acre.

(ii) Minimum row width for all crops is 20 links (13.2 feet). Exception: Disregard minimum width requirements for irrigation tow-line areas.

Ohio

(1) Deduction credit.

(i) Minimum width of twenty links.

(ii) Minimum area of 0.3 acre except 0.03 acre for tobacco.

(2) Adjustment credit. Minimum width of eight links for all crops except tobacco.

(3) Redetermination refund. One-tenth acre for tobacco acreage.

Oklahoma

Redetermination refund. Three-tenths acre for all acreage.

Oregon

Deduction credit. Minimum width of six feet within the planted area for close-sown crops.

South Dakota

(1) Deduction credit. Minimum area of 0.5 acre.

(2) Adjustment credit. Minimum area of 0.5 acre.

Tennessee

(1) Adjustment credit. Minimum width.

(i) Row crops other than tobacco. Four rows.

(ii) Tobacco.

(A) Along field boundary. One row.

(B) Within planted area. Two rows.

(2) Redetermination refund. One-tenth acre for tobacco acreage.

Texas

(1) Deduction credit. Minimum width of nine links.

(2) Adjustment credit. Minimum width of nine links.

Virginia

Redetermination refund. For all acreage, the larger of 0.1 acre or 10 percent of the acreage for areas of less than five acres.

Wisconsin

(1) Deduction credit. Minimum width of 10 links for all crops except tobacco.

(2) Redetermination refund. One-tenth acre for tobacco acreage.

§ 718.11 County committee responsibilities.

The county committee shall provide for making program determinations and securing information in accordance with this part.

§ 718.12 Authority for farm entry and securing information.

(a) Any authorized representative of ASCS shall have authority upon presentation of written authorization, if such authorization is requested by any producer interested in the farm, to:

(1) Enter any farm for the purpose of ascertaining acreage, production, or adherence to any other requirement specified as a prerequisite for obtaining a program benefit under any mandatory or voluntary program administered by ASCS.

(2) Secure from producers, on forms prescribed by the Deputy Administrator, data which are necessary to keep current the farm records located in the county ASCS office or which are a requirement to obtain program benefits under any mandatory or voluntary program administered by ASCS.

(b) If a farm operator refuses to permit entry for the purpose of ascertaining acreage or production or determining adherence to any other requirement specified as a prerequisite for obtaining a program benefit under any mandatory or voluntary program for which such determinations are required, the county executive director shall notify the farm operator in writing as soon as possible that, unless the farm operator advises the county office within 14 days after the date of such notice that such operator will permit entry and inspection on the farm and pay the cost thereof, the following consequences, as applicable, will apply until such time as the operator permits such entry and inspection:

(1) Program benefits will be denied;

(2) The entire crop production will be considered in excess of the farm marketing quota when applicable. In addition, for tobacco, the farm operator will be required to furnish proof of disposition of:

(i) Burley and flue-cured tobacco production on the farm which is in addition to the production shown on the marketing card;

(ii) Other kinds of tobacco produced on the farm and no credit will be given for disposing of any excess tobacco

other than that properly identified by a marketing card unless such excess tobacco is disposed of in the presence of a representative of the county committee in accordance with § 718.44 of this part.

§ 718.13 Denial of program benefits.

If a farm operator refuses to furnish reports or data which are necessary to keep current the farm records located in the county office, or which are a requirement to obtain program benefits, such operator will be denied program benefits.

Subpart C—Measurements, Reporting and Inspections

§ 718.20 Rule of fractions.

(a) The acreage of each field or subdivision computed for tobacco shall be recorded in acres and hundredths of an acre, dropping all thousandths of an acre.

(b) The acreage of each field or subdivision computed for land uses or crops, except tobacco, shall be recorded in acres and tenths of an acre, rounding all hundredths of an acre to the nearest tenth.

§ 718.21 Measurement services.

(a) Services include, but are not limited to, measuring land and crop areas, ACR acreage, conserving uses (CU) acreage, as defined in part 1413 of this title, for which a program crop benefit is received under an annual acreage reduction program that is not devoted to such program crop, measuring quantities of farm-stored commodities, and appraising the yields of crops when required for program administration purposes. The county committee shall provide measurements services if the producer requests such service and pays the cost, except that requests for service shall not be accepted for determining total acreage of a crop or land use when the request is made:

(1) After the established final reporting date for the applicable crop except as provided in § 718.45 of this part.

(2) After the farm operator has furnished the county office production evidence when required for program administration purposes except as provided in § 718.24 of this part.

(3) In connection with a late-filed farm operator report of acreage, unless there is evidence of at least one of the following:

(i) The existence of the crop,

(ii) The use made of the crop,

(iii) The lack of crop,

(iv) A disaster condition affecting the crop.

(b) The acreage requested to be measured by staking and referencing shall not exceed the effective farm allotment for marketing quota crops or maximum permitted acreage for program crops for the program year. The farm shall be considered to be in compliance with the allotment or program requirement for the farm if the entire allotment or program requirement for the program year was measured and the crop is planted or the proper land use is within the area measured by staking and referencing. Only the acreage measured shall be guaranteed for the current program year.

(c) Producers may request determination of acreages that have been planted by use of current year slides when available or ground compliance methods.

(d) When a producer requests, pays for, and receives written notice that measurement services have been furnished, the measured acreage shall be guaranteed for all program purposes for the current year even though an error in the measurement service is discovered in the measurement, placement of field or subdivision lines, planimetry, or computation thereof, if the producer has taken action based on the service and the entire crop or land use acreage required for the farm was measured. If the producer has not taken action based on the measurement service, the producer shall be notified in writing that an error was discovered and the nature and extent of such error. In such cases, the corrected acreage will be used for determining program compliance for the current year.

§ 718.22 Acreage reports.

(a) To be eligible for any program benefits a report of acreage shall be required on farms that produce an agricultural commodity that includes:

(1) Number of acres,

(2) Land use,

(3) Production,

(4) Prevented or failed acreage and,

(5) Other program requirements.

(b) The reports required under paragraph (a) of this section shall be filed with the county committee by the:

(1) Farm operator, farm owner, or duly authorized representative,

(2) Applicable final reporting date established by the Deputy Administrator which is publicized by and available at the applicable State and county ASCS office.

(c) Acreage and land use reports shall be:

(1) Used to determine program eligibility and benefits.

(2) On forms prescribed and in accordance with instructions issued by the Deputy Administrator.

§ 718.23 Late filed reports.

(a) A farm operator's report may be accepted after the established date for reporting if evidence is still available for inspection which may be used to make a determination with respect to:

(1) The existence of the crop,

(2) The use made of the crop,

(3) The lack of crop, or

(4) A disaster condition affecting the crop.

(b) The farm operator shall pay the cost of a farm visit by an authorized ASCS employee unless COC has determined that failure to report in a timely manner was beyond the producer's control.

§ 718.24 Revised reports.

The farm operator may revise a report of acreage to change the acreage reported. Revised reports shall be filed in accordance with instructions issued by the Deputy Administrator and shall be accepted:

(a) At any time for all crops and land uses if evidence exists for inspection and determination of:

(1) The existence of the crop,

(2) The use made of the crop,

(3) The lack of crop, or

(4) A disaster condition affecting the crop; and

(b) Until the time that production evidence is furnished to the county office for extra long staple cotton yield purposes, to reflect the fact that the harvested acreage is less than the planted acreage.

(c) Unless the farm has been selected for inspection and acreage has been determined.

§ 718.25 Reporting out of compliance.

The farm operator, farm owner or other duly authorized agent who files an acreage report, shall be ineligible for all program benefits for that crop on that farm when:

(a) A program crop exceeds the maximum acreage permitted,

(b) A marketing quota crop exceeds the acreage allotment, or

(c) ACR is less than the required acreage amount.

§ 718.26 Farm inspections.

(a) A representative number of farms selected in accordance with instructions issued by the Deputy Administrator shall be inspected by an authorized representative of ASCS to ascertain the acreage or production, or to determine adherence to any requirement specified

as a prerequisite for obtaining program benefits.

(b) The following farms are required to be inspected:

(1) Any farm in which a member or employee of the State or county committee, or such individual's spouse, has an interest in the farm.

(2) Any farm in which the operator of the farm has controlling interest in a firm (such as a gin, warehouse, buying point, or elevator), and the records of such firm are used to substantiate production.

(3) A tobacco warehouse operator, dealer, or manager which has an interest in tobacco on the farm.

(4) When the county committee determines an estimate of production is needed to properly administer the program for any marketing quota crop.

(5) A farm which an acreage report shows nonquota tobacco produced in a State where marketing quotas are in effect for any kind of tobacco.

(6) Such farm has an effective flue-cured, dark air-cured, or fire-cured, sun-cured, or cigar tobacco allotment.

(7) A farm for which a review of the production evidence submitted by the operator indicates that:

(i) Data is not valid,

(ii) Reported production is not reasonable when compared to other farms in the area.

(8) Farms for which an ASCS–574 is filed for prevented or failed acreage credit.

(c) County office will conduct random inspections. Farms will be selected to determine producer compliance with program requirements.

Subpart D—Tolerances, Variances, and Adjustments

§ 718.40 Variance rules applicability.

(a) Tolerance and variance rules apply:

(1) For those acreages for which measurement service was not furnished.

(2) To those fields for which a staking and referencing was performed but such acreage was not planted according to those measurements.

(b) Tolerance and variance do not apply:

(1) For official fields when the entire field is devoted to one crop or land use.

(2) For those fields for which staking and referencing was performed and such acreage was planted according to those measurements.

(3) When measurement after planting is furnished.

(4) To the adjusted acreage for farms using measurement after planting which have a determined acreage greater than the marketing quota crop allotment, permitted maximum program crop acreage, or an acreage less than the required ACR.

(c) Administrative variance is applicable to all marketing quota crop acreages. Marketing quota crop acreages as determined in accordance with this part shall be deemed in compliance with the effective farm allotment or program requirement when determined acreage does not exceed the effective farm allotment by more than an administrative variance determined as follows:

(1) For all kinds of tobacco subject to marketing quotas, except dark air-cured and fire-cured the larger of 0.1 acre or 2 percent of the allotment.

(2) For dark air-cured and fire-cured tobacco, an acreage based on the effective acreage allotment as provided in the table as follows:

Effective acreage allotment is within this range	Applicable administrative variance
0.01 to 0.99	0.01
1.00 to 1.49	0.02
1.50 to 1.99	0.03
2.00 to 2.49	0.04
2.50 to 2.99	0.05
3.00 to 3.49	0.06
3.50 to 3.99	0.07
4.00 to 4.49	0.08
4.50 and up	0.09

(d) Tolerance is:

(1) For individual crop acreages or program requirements, except for tobacco, the larger of 1.0 acres or 5 per cent of the reported acreage, but not to exceed 10 acres.

(2) For tobacco, other than flue-cured or burley, the larger of .10 acres or 5 per cent of the effective allotment.

(e) With respect to:

(1) Individual crop acreages or program requirements, except for tobacco, the applicable requirements shall be considered to have been met if the determined acreage for each crop does not differ from the reported acreage by more than the tolerance.

(2) Tobacco other than flue-cured or burley, if the determined acreage exceeds the allotment by more than the administrative variance but by not more than the tolerance, such excess acreage of tobacco may be adjusted to the effective farm acreage allotment in order to:

(i) Avoid marketing quota penalties and,

(ii) Receive price support if otherwise eligible.

(3) Program crops which are subject to reduced planting requirements are considered to have met planting requirements when the determined acreage of the crop is less than 50 per cent of the maximum permitted acreage but is within tolerance.

§ 718.41 Acreages.

(a) If an acreage has been established by a representative of ASCS for an area delineated on an aerial photograph, such acreage will be recognized by the county committee as the official acreage for the area until such time as the boundaries of such area are changed. When boundaries not visible on the aerial photograph are established from data furnished by the producer, such acreage shall not be recognized as official acreage until the boundaries are verified by an authorized representative of ASCS.

(b) Measurements of any row crop shall extend beyond the planted area by the larger of fifteen inches (approximately 1.9 links) or one-half the distance between the rows.

(c) The entire acreage of a field or subdivision of a field devoted to a crop or land use shall be considered as devoted to the crop or land use subject to any allowable deduction or adjustment credit under this paragraph except as otherwise provided in this part.

§ 718.42 Skip rows.

(a) To be considered under the skip row provisions of this section the field must be planted in a uniform planting pattern and the number of rows planted between skips cannot exceed 36 rows. If more than one pattern is used within a field, the area planted to each pattern will be considered a subdivision.

(b) The entire acreage of the field or subdivision shall be considered as devoted to the crop where the crop is planted in strips of two or more rows and the strips of idle land are less than 60 inches (approximately 7.6 links).

(c) If the strips of idle land are at least 60 inches (approximately 7.6 links) in width, only the acreage of the strips planted to the crop, including the larger of one-half the distance between the rows of the crop or 15 inches (approximately 1.9 links) beyond the outside rows of the crop in each strip, shall be considered as devoted to the crop.

(d) When one crop is alternating with another crop, the entire acreage of the field or subdivision shall be considered as devoted to the crop being measured where such crop is planted in strips of one or more rows and the strips of the other crop are less than 60 inches (approximately 7.6 links).

(e) If strips of the alternating crop are at least 60 inches (approximately 7.6

links) in width and if the alternating crop:

(1) Has substantially the same growing season as the crop being measured, only the acreage planted to the crop being measured, including the smaller of one-half the distance between the strips of the crop being measured or 30 inches (approximately 3.8 links), shall be considered as being devoted to the crop being measured.

(2) Does not have substantially the same growing season as the crop being measured, determine the acreage of the crop being measured in accordance with paragraph (b) or (c) of this section.

(f) When crops are planted in single wide rows, the entire acreage of the field or subdivision shall be considered as devoted to the crop where the distance between the rows of such crop is less than 60 inches (approximately 7.6 links). If the distance between the rows of the crop is at least 60 inches (approximately 7.6 links), only 60 inches (approximately 7.6 links), in width for each row shall be considered as being devoted to the crop.

§ 718.43 Deductions.

(a) Any contiguous area which is not devoted to the crop or land use being measured and which is not part of a skip-row pattern under § 718.42 of this part shall be deducted from the acreage of the crop or land use if such area meets the following minimum national standards or requirements:

(1) A minimum width of 30 inches (approximately 3.8 links).

(2) For tobacco, three-hundredths acre, except that turn areas, terraces, permanent irrigation and drainage ditches, and sod waterways each of which is at least 30 inches (approximately 3.8 links) in width may be combined to meet the 0.03-acre minimum requirement.

(3) For all other crops and land uses, one-tenth acre. Turn areas, terraces, permanent irrigation and drainage ditches, and sod waterways, each of which is at least 30 inches (approximately 3.8 links) in width and each of which contain 0.1 acre or more may be combined to meet any larger minimum prescribed for a State in accordance with § 718.10(b) of this part.

(b) A standard deduction of three percent of the area devoted to a row crop and zero percent of the area devoted to a close-sown crop may be used in lieu of measuring the acreage of turn areas. The county committee may use, upon approval by the State committee, a different percentage when the three percent or zero percent deduction does not adequately reflect the normal cultural practice in the county.

§ 718.44 Adjustments.

(a) The farm operator or other interested producer having excess tobacco acreage (other than flue-cured or burley) may adjust an acreage of the crop in order to avoid a marketing quota penalty if such person:

(1) Notifies the county committee of such election within 15 days after the date of mailing of notice of excess acreage by the county committee; and

(2) Pays the cost of a farm visit to determine the adjusted acreage by no later than the date such farm visit is made.

(b) The farm operator may adjust an acreage of tobacco (except flue-cured and burley) by disposing of such excess tobacco prior to the marketing of any of the same kind of tobacco from the farm. The disposition shall be witnessed by a representative of ASCS and may take place before, during, or after the harvesting of the same kind of tobacco grown on the farm. However, no credit will be allowed toward the disposition of excess acreage after the tobacco is harvested but prior to marketing, unless the county committee determines that such tobacco is representative of the entire crop from the farm of the kind of tobacco involved.

(c) No acreage adjustments shall be allowed for ACR when the acreage determined from a farm inspection is less than the program requirement.

§ 718.45 Notice of measured acreage.

Written notice of measured acreage shall be on a form prescribed by the Deputy Administrator and shall constitute notice to all interested producers on the farm. The county committee shall furnish such notice to each farm operator when a farm is measured, remeasured, or checked for adjustment credit.

§ 718.46 Producer reliance on previous determinations.

If in determining an acreage, a producer relies in good faith on an acreage previously determined during the crop year by an employee of ASCS (except acreage determined from data furnished by the producer) and the acreage is subsequently determined by the county committee to be incorrect, the county committee shall consider the acreage on which the producer relied to be correct for that program year upon obtaining satisfactory proof from the producer that such producer relied in good faith upon the incorrect determination. However, the county committee may use the correct data if the producer would be adversely affected by an error in producer service provided under § 718.21 of this part.

§ 718.47 Redeterminations.

(a) A redetermination of crop and land use, acreage, appraised yield, or farm stored production for a farm may be initiated by the county committee, State committee, or Deputy Administrator at any time. Such redeterminations may also be initiated by a producer who has an interest in the farm upon filing a request within 15 days after the date of the notice furnished the farm operator in accordance with § 718.44 of this part or within five days after the initial appraisal of the yield of a crop or before any of the farm stored production is removed from storage and upon payment of the cost of making such redetermination. A redetermination shall be undertaken in the manner prescribed by the Deputy Administrator. Such redetermination shall be used in lieu of any prior determination. The redetermination is final and is not appealable under part 780 of this chapter.

(b) The county committee shall refund the payment of the cost for a redetermination when, because of an error in the initial determination:

(1) The appraised yield is changed by at least the larger of:

(i) Five percent or five pounds for cotton;

(ii) Five percent or one bushel for wheat, barley, and rice;

(iii) Five percent or two bushels for corn and grain sorghum;

(2) The farm stored production is changed by at least the smaller of three percent or 600 bushels; or

(3) The acreage of the crop or land use is:

(i) Changed by at least the larger of three percent or 0.5 acre, or

(ii) Considered to be within program requirements.

(c) The county committee shall notify, in writing, the farm operator of its redetermination. Such notice shall constitute notice to all interested producers on the farm.

(d) The first determination by the county committee is appealable to the State committee. The second and subsequent remeasurements are not appealable under the provisions of part 780 of this chapter.

§ 718.48 Unusual cases.

To assure uniform and equitable treatment when unusual cases cannot be handled under this part, the Deputy Administrator shall provide, as

necessary, methods for determining the proper acreage in the following cases:

(a) The farm operator has acted in good faith in reliance upon erroneous advice given by a representative of the State or county committee who is authorized to furnish information concerning the determination of acreage.

(b) Any method of planting the crop or any method of adjusting the crop or land use acreage which tends to defeat the program purposes.

(c) Other situations or planting patterns which are not otherwise provided for in this part.

PART 719—RECONSTITUTION OF FARMS, ALLOTMENTS, NORMAL CROP ACREAGE AND PRECEDING YEAR PLANTED ACREAGE

2. The authority citation for part 719 is revised to read as follows:

Authority: 7 U.S.C. 1375, 1378, 1379, 1461–1469, and 1801 note.

3. Sections 719.2 through 719.8 are revised to read as follows:

§ 719.2 Definitions.

In determining the meaning of the provisions of this part, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular, words importing the masculine gender include the feminine as well, and words used in the present tense include the future as well as the present. The following terms shall have the following meanings:

Acreage means the acreage of a commodity planted, considered planted, or both, if applicable, in one or more preceding years as required by applicable commodity regulations.

Allotment means an acreage for a commodity allocated to a farm in accordance with the Agricultural Adjustment Act of 1938, as amended, and applicable commodity regulations.

Applicable commodity regulations means the regulations for a crop of a particular commodity which are set forth in 7 CFR parts 723, 724, 725, 726, and 729, 1413, and 1414 for wheat, feed grains, upland and extra long staple cotton, rice, tobacco, and peanuts.

Base means the acreage base for a crop on a farm which is determined in accordance with 7 CFR part 1413.

Combination. Consolidation of two or more farms or parts of farms into one farm.

Committees—(1) *Community committee.* Persons elected within a community as the community committee under the regulations governing the selection and functions of Agricultural Stabilization and Conservation county and community committees set forth in part 7 of this title.

(2) *County committee.* Persons elected within a county as the county committee under the regulations governing the selection and functions of Agricultural Stabilization and Conservation county and community committees set forth in part 7 of this title, except that for Puerto Rico and the Virgin Islands, the Caribbean Area Agricultural Stabilization and Conservation Committee shall, insofar as applicable, perform the functions of the State committee.

(3) *State committee.* Persons in a State designated by the Secretary as the Agricultural Stabilization and Conservation State committee under section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended, except that for Puerto Rico and the Virgin Islands, the Caribbean Area Agricultural Stabilization and Conservation Committee shall, insofar as applicable, perform the functions of the State committee.

County. County or parish of a State except that for Alaska, Puerto Rico and the Virgin Islands, county shall be an area designated by the State committee with the concurrence of the Deputy Administrator.

County Executive Director. Person employed by the county committee to execute the policies of the county committee and be responsible for day-to-day operations of the ASCS county office or the person acting in such capacity.

Cropland. Land which the county committee determines meets any of the following conditions:

(1) Is currently being tilled for the production of a crop for harvest.

(2) Is not currently tilled, but it can be established that such land:

(i) Has been tilled in a prior year; and

(ii) Is suitable for crop production.

(3) Is currently devoted to one- or two-row shelterbelt planting, orchards, or vineyards.

(4) Is converted to water storage uses and that meets the criteria for acreage conservation reserve in accordance with 7 CFR part 1413.

(5) Is preserved as cropland in accordance with § 719.10 of this chapter. Land classified as cropland shall be removed from such classification upon a determination by the county committee that the land is:

(i) Removed from agricultural production;

(ii) No longer suitable for production of crops;

(iii) Devoted to trees (other than those set forth in accordance with § 719.10 of this chapter, one- or two-row shelterbelt plantings, orchards, or vineyards) which were planted in the preceding year except that land planted to trees:

(A) From September 1 through December 31 of the preceding year shall retain its cropland classification for the succeeding year.

(B) In the current year shall retain its cropland classification for the current year; or

(iv) No longer preserved as cropland in accordance with the provisions of § 719.10 of this chapter and does not meet the conditions in paragraphs (1) through (4) of this definition.

Current year means the program year for which applicable allotments, quotas, bases, and acreages, or other program determinations are established or considered.

Department. U.S. Department of Agriculture.

Deputy Administrator. Deputy Administrator, or acting Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

Division. Dividing a farm into two or more farms or parts of farms.

Farm number. Serial number assigned to a farm by the county committee for the purpose of identification.

Federally owned land. Land owned by the Federal Government or any department, bureau, or agency thereof, or any corporation whose stock is wholly owned by the Federal Government.

Landlord. A person who rents or leases farmland to another person.

OGC representative. An attorney in the Office of the General Counsel, U.S. Department of Agriculture.

Operator. Person who is in general control of the farming operations on the farm during the program year.

Owner. A person who has legal ownership of farmland, including a person who is buying farmland under a purchase agreement.

Person. Individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable, a State, a political subdivision of a State, or any agency thereof.

Preceding year. Program year immediately preceding the current year.

Producer. Person who, as owner, landlord, tenant or sharecropper, shares in the risk of producing the crop, and is entitled to share in the crops available for marketing from the farm or would have shared had the crops been produced.

Quota means the pounds allocated to a farm for a commodity as prescribed in the applicable commodity regulations.

Reconstitution. Change in the land constituting a farm as a result of combination or division.

Representative of the county committee. A member of the county committee or any employee of the county committee.

Representative of the State committee. Member of the State committee or any employee of the State committee.

Secretary. Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority is delegated to act in his stead.

Sharecropper. A producer who performs work in connection with the production of a crop under the supervision of the operator and who receives a share of such crop for his labor.

State Executive Director. Person employed by the State committee to execute the policies of the State committee and to be responsible for the day-to-day operations of the State ASCS office, or the person acting in such capacity.

Substantive change means a significant modification in cropping practice, equipment, labor, accounting system or management with respect to a farming operation.

Tenant. (1) A person usually called a *cash tenant, fixed-rent tenant,* or *standing-rent tenant* who rents land from another for a fixed amount of cash or a fixed amount of a commodity to be paid as rent; or

(2) A person (other than a sharecropper) usually called a "share tenant" who rents land from another person and pays as rent a share of the crops or proceeds therefrom. A tenant shall not be considered the farm operator if he does not have control of the farm operation.

Tract means a unit of contiguous land under one ownership which is operated as a farm or part of a farm.

§ 719.3 Farm constitution.

(a) *Farms constituted under prior regulations.* Land which has been properly constituted under prior regulations shall remain so constituted until a reconstitution is required under paragraph (d) of this section.

(b) *Farms constituted for the first time or reconstituted hereafter.* With respect to the constitution and identification of land as a farm for the first time or the reconstitution of farms made hereafter, a farm shall include all land operated by one person as a single farming unit except that it shall not include land under any of the following conditions:

(1) Land under separate ownership unless:

(i) The county committee determines that all such land is nearly equal in productive capacity, and

(ii) The owners agree in writing, except that when an ownership tract is added to an existing farm consisting of tracts having different ownership interests, the owners of the tracts to which the tract is added need not file another written agreement.

(2) Land under a lease agreement of less than 2 crop years duration.

(3) Land across county lines when the tobacco allotments or quotas established for the land involved cannot be transferred from one county to another county by lease, sale, owner, or operator. However, this paragraph shall not apply if:

(i) All of the land is owned by one person and operated by one person and all such land is contiguous;

(ii) Two or more tracts are located in counties that are contiguous in the same state and are owned by the same person if:

(A) A burley tobacco quota is established for one or more of the tracts; and

(B) The county committee determines that the tracts will be operated as a single farming unit as set forth in § 719.4(e); or

(iii) Because of a change in operation, tracts or parts of tracts will be divided from the parent farm that currently has land in more than one county, and there is no change in operation and ownership of the remainder of the farm, or if there is a change in ownership, the new owner agrees in writing to the constitution of the farm.

(4) Federally owned land except land acquired by an agency having the right of eminent domain and leased back to the former owner with uninterrupted possession.

(5) Federal-and State-owned wildlife land unless the former owner has possession of the land under a leasing agreement.

(6) Land constituting a farm which is declared ineligible to participate in a program under the regulations governing the program.

(7) For acreage base crops, land located in counties that are not contiguous. However, this paragraph shall not apply if:

(i) Counties touch at a corner;

(ii) Counties are divided by a river;

(iii) Counties do not touch because of a correction line adjustment; or

(iv) The land is within 20 miles, by road, of other land that will be a part of the farming unit.

(8) For peanut quotas, land across:

(i) County lines when the peanut quotas established for the land involved cannot be transferred; or

(ii) State lines.

(c) *Location of farm for administrative purposes.* (1) If all land in the farm is located in one county, the farm shall be administratively located in such county.

(2) If the land in the farm is located in more than one county, the farm shall be administratively located in either of such counties as the county committees and the farm operator agree. If no agreement can be reached, the farm shall be administratively located in the county where the principal dwelling is situated, or where the major portion of the farm is located if there is no dwelling.

(3) Notwithstanding the provisions of paragraphs (c) (1) and (2) of this section, if the land in the farm is part of an Indian reservation and is operated by a grazing association, the farm may be administratively located in the county where such grazing association has its headquarters if the county committee involved and the farm operator agree to such location, provided the persons using the land do not reside thereon and the geographic features are such that administrative access would be more practical.

(d) *Required reconstitutions.* A reconstitution of a farm either by division or by combination shall be required whenever:

(1) A substantive change has occurred in the operation of the land after the last constitution or reconstitution and as a result of such change the farm does not meet the conditions for constitution of a farm as set forth in paragraph (b) of this section except that no reconstitution shall be made if the county committee determines that the primary purpose of the change in operation is to establish eligibility to transfer allotments subject to sale or lease;

(2) The farm was not properly constituted under the applicable regulations in effect at the time of the last constitution or reconstitution;

(3) An owner requests in writing that the owner's land no longer be included in a farm which is composed of tracts under separate ownership.

(4) The county committee determines that the farm was reconstituted on the basis of false information furnished by the owner or farm operator; or

(5) The county committee determines that the tracts of land included in a farm

are not being operated as a single farming unit.

(6) An owner of a farm, constituted as a single farming unit prior to 1978, which is comprised of land located in two or more counties for which there is a quote or allotment established for such farm and such quota or allotment is subject to lease and transfer restrictions across county lines, requests in writing that the farm be reconstituted by dividing the tracts. The resulting farms shall be administratively serviced by the county office serving the county in which the land is geographically located.

(7) One or more owners of the farm refuse to sign a contract to participate in the Conservation Reserve Program or other authorized conservation program administered by the Agricultural Stabilization and Conservation Service, while one or more owners on the same farm want to enter into such contract;

(8) In accordance with guidelines issued by the Deputy Administrator, land is sold for or devoted to nonagricultural uses;

(9) Notwithstanding the provisions of paragraphs (d)(1) through (d)(8) of this section, a reconstitution shall not be approved if the county committee determines that the primary purpose of the reconstitution is to:

(i) Increase the amount of program benefits received;

(ii) Meet the acreage reduction requirements of production adjustment programs;

(iii) Avoid liquidated damages or penalties which are assessed under a production adjustment program;

(iv) Correct an erroneous acreage report; or

(v) Circumvent any other program provision.

§ 719.4 Guides for determining the land constituting a farm.

(a) *General.* In determining the constitution of a farm, consideration shall be given to provisions such as ownership and operation. A brief explanation of these provisions is outlined in this section to assist committees in properly determining what land is to be included in a farm.

(b) *Ownership.* The county committee shall require specific proof where there is doubt as to ownership.

(c) *Family members.* Land owned by different members of an immediate family living in the same household and operated as a single farming unit shall be considered as being under the same ownership in determining a farm.

(d) *Parent corporations and subsidiaries.* All land which is operated as a single farming unit and which is owned and operated by a parent corporation and subsidiary corporations of which the parent corporation owns more than 50 percent of the value of the outstanding stock (or which is owned and operated by such subsidiary corporations) shall be constituted as one farm.

(e) *Single farming unit.* Land which the committee determines is being operated by one person with cropping practices, equipment, labor, accounting system, and management substantially separate from that of any other unit shall be considered to constitute a single farming unit.

(f) *Operation.* In determining the constitution of a farm, the county committee shall satisfy itself that the operator will be in general control of the farming operations on the farm for the program year.

(g) *Productivity.* Combinations of land under different ownership shall not be permitted when the county committee determines that:

(1) The cropland on one tract is primarily irrigated and the cropland on the other tract is primarily nonirrigated; or

(2) The productivity of the land for producing wheat, feed grains, cotton, and rice is not substantially the same.

§ 719.5 County committee action to reconstitute a farm.

Action to reconstitute a farm may be initiated by the county committee, the farm owner, or the operator of the farm. Any request for a farm reconstitution shall be filed with the county committee. The farm operator of each farm before reconstitution and the farm operator of each farm after reconstitution shall be notified of the action taken by the county committee. The owners of the farm before reconstitution and the owners of such farm after reconstitution shall also be notified. If the proposed reconstitution is approved, each notice shall show the program year for which the reconstitution will become effective for each allotment, quota, and base.

§ 719.6 Substantive change in farming operations, and changes in related legal entities.

(a) *General rule.* Land that is properly constituted as a farm shall not be reconstituted if:

(1) The reconstitution request is based upon the formation of a newly established legal entity which owns or operates the farm or any part of the farm and the county committee determines there is not a substantive change in the farming operation;

(2) The county committee determines that the primary purpose of the request for reconstitution is to:

(i) Obtain additional benefits under one or more commodity programs;

(ii) Meet the ACR requirements of production adjustment programs;

(iii) Avoid damages or penalties under an acreage reduction contract or statute;

(iv) Correct an erroneous acreage report; or

(v) Circumvent any other program provisions. In addition, no farm shall remain as constitued when the county committee determines that a substantive change in the farming operation has occurred which would require a reconstitution, except as otherwise approved by the State committee with the concurrence of the Deputy Administrator.

(b) *Determining substantive change.* In determining whether a substantive change has occurred with respect to a farming operation, the county committee shall consider factors such as the composition of the legal entities having an interest in the farming operation with respect to management, financing, and accounting. The county committee shall also consider the use of land, labor, and equipment available to the farming operations and any other relevant factors that bear on the determination.

(c) *Corporations and trusts.* Unless otherwise approved by the State committee with the concurrence of the Deputy Administrator, when the county committee determines that a corporation, trust, or other legal entity is formed primarily for the purpose of obtaining additional benefits under the commodity programs, the farm shall remain as constituted, or shall be reconstituted, as applicable, when the farm is owned or operated by:

(1) A corporation having more than 50 percent of the stock owned by members of the same family living in the same household;

(2) Corporations having more than 50 percent of the stock owned by stockholders common to more than one corporation; or

(3) Trusts in which the beneficiaries and trustees are family members living in the same household.

(d) Application of the provisions of paragraph (c) of this section shall not limit or affect the application of paragraphs (a) and (b) of this section.

§ 719.7 Reconstitution of allotments, quotas, bases, and acreages.

(a) *When to reconstitute.* Farms shall be reconstituted in accordance with this section as soon as it is determined that the land areas are not properly constituted and, to the extent practicable, shall be based on the facts and conditions existing at the time the

change requiring the reconstitution occurred. For each farm reconstituted, the allotments, quotas, bases, and acreages shall also be reconstituted in accordance with the provisions of this part. County office records shall be corrected as necessary to reflect properly the basic data for each farm as reconstituted.

(b) *Effective dates of reconstitutions.* (1) Allotment crops, quota crops, acreage base crops. The county committee, in accordance with instructions issued by the Deputy Administrator, shall determine the effective date of all farm reconstitutions.

(i) Reconstitutions of farms on which is grown a crop with respect to which producers must enter contracts with the Commodity Credit Corporation in order to participate in the annual commodity program for such crop will be effective for the current program year if initiated on or before the last day of the period during which producers may enter into such contracts, unless:

(A) The reconstitution would affect a producer adversely, as determined by the State committee,

(B) Crop acreages were reported before requesting the reconstitution and the producer will not be in compliance with the program unless the reconstitution is effective; or

(C) The county committee determines that a producer has filed an erroneous acreage report for the relevant program year and the reconstitution would have the effect of eliminating the erroneous acreage report.

(ii) For farms other than those specified in paragraph (b)(1)(i) of this section, a reconstitution will be effective for the current program year for each crop for which the reconstitution is initiated before the planting of such crop begins or would have begun.

(iii) No reconstitution shall be effective for the current program year with respect to reconstitutions that result from the combination of two or more farms that are initiated:

(A) After the last date on which producers may enter into contracts with respect to farms described in paragraph (b)(1)(i) of this section; or

(B) After the planting of crops on the farm began or would have begun with respect to farms described in paragraph (b)(1)(ii) of this section.

(iv) Notwithstanding the provisions of paragraph (b)(1) (i) and (ii) of this section, a division may be effective for the current program year if the county committee, with the concurrence of the State committee, determines that the purpose of the request for reconstitution is not to perpetrate a scheme or device the effect of which is:

(A) To avoid the statutes and regulations governing commodity programs;

(B) To obtain additional program benefits for the relevant crop year;

(C) To avoid the assessment of liquidated damages under a production adjustment contract;

(D) To eliminate a marketing quota penalty;

(E) To correct an erroneous acreage report;

(F) To gain allotment, quota, or base history protection;

(G) To plant excess acreage of a program crop in an acreage reduction program; or

(H) To avoid cross compliance requirements.

(2) Agricultural Conservation Program. The reconstitution shall not be effective for purposes of the Agricultural Conservation Program (ACP) for the current program year if the county committee has approved cost-sharing for a producer on the farm for the current program year unless:

(i) The parent farm on which cost-sharing was approved was not properly constituted at the time of approval, or

(ii) The county committee determines that some producer on the farm would not be eligible to participate in the ACP if the reconstitution is not made effective.

(3) Misrepresentation. Notwithstanding any other provision of this section, if the county committee determines that the farm was or was not reconstituted because of a misrepresentation by a producer, the farm shall be properly reconstituted, and the effective date of such reconstitution for all purposes shall be retroactive to the date the farm was improperly constituted.

(4) Reconstitutions of farms on which there is no cropland may be effective for the current crop year.

(c) *Adjustments and release and reapportionments.* Allotments, quotas, bases, and acreages for reconstituted farms resulting from the divisions or combinations of parent farms in accordance with this part are subject to the requirements governing:

(1) Adjustments from allotment and quota reserves for the commodity;

(2) Released and reapportioned farm allotments and quotas; and

(3) Base adjustments. The application of these provisions shall be in accordance with the regulations governing the determination of allotments, quotas, and bases for the commodity involved.

§ 719.8 Rules for determining farms, allotments, quotas, bases, and acreages when reconstitution is made by division.

(a) *General.* The methods for dividing farms, allotments, quotas, bases, and acreages in order of precedence, when applicable, are estate, designation by landowner, contribution (including contribution-cropland and contribution-history), cropland, and history.

(b) *Estate method.* The estate method is the proration of allotments, quotas, bases, and acreages for a parent farm among the heirs in settling an estate. If the estate sells a tract of land before the farm is divided among the heirs, the allotments, quotas, bases, and acreages for that tract shall be determined by using one of the methods provided in paragraphs (c) through (g) of this section.

(1) Allotments, quotas, bases, and acreages shall be divided in accordance with a will, but only if the county committee determines that the terms of the will are such that a division can reasonably be made by the estate method.

(2) If there is no will or the county committee determines that the terms of a will are not clear as to the division of allotments, quotas, bases, and acreages, such allotments, quotas, bases, and acreages shall be apportioned in the manner agreed to in writing by all interested heirs or devisees who acquire an interest in the property for which such allotments, quotas, bases, and acreages have been established. An agreement by the administrator or executor shall not be accepted in lieu of an agreement by the heirs or devisees.

(3) If allotments, quotas, bases, and acreages are not apportioned in accordance with the provisions of paragraph (b)(1) or (2) of this section, the allotments, quotas, bases, and acreages shall be divided pursuant to paragraphs (d) through (g) of this section, as applicable.

(c) *Designation by landowner method.* (1) If the ownership of a tract of land is transferred from a parent farm, the transferring owner may request that the county committee divide the allotments, quotas, bases, and acreages between the parent farm and the transferred tract, or between the various tracts if the entire farm is sold to two or more purchasers, in a manner designated by the owner of the parent farm subject to the conditions set forth in paragraph (c)(4) of this section.

(2) If the county committee determines that allotments, quotas, bases, and acreages cannot be divided in the manner designated by the owner because of the conditions set forth in

paragraph (c)(4) of this section, the owner shall be notified and permitted to revise the designation so as to meet the conditions in paragraph (c)(4) of this section. If the owner does not furnish a revised designation of allotments, quotas, bases, and acreages within a reasonable time after such notification, or if the revised designation does not meet the conditions of paragraph (c)(4) of this section, the county committee will prorate the allotments, quotas, bases, and acreages in accordance with paragraphs (d) through (g) of this section.

(3) If a parent farm is composed of tracts, under separate ownership, each separately owned tract being transferred in part shall be considered a separate farm and shall be constituted separately from the parent farm using the rules in paragraphs (d) through (g) of this section, as applicable, prior to application of the provisions of this paragraph.

(4) A landowner may designate, as provided in this paragraph, the manner in which allotments, quotas, bases, and acreages are divided.

(i) The transferring owner and transferee shall file a signed written memorandum of understanding of the designation with the county committee before the farm is reconstituted and before a subsequent transfer of ownership of the land. The heirs of an estate that acquire an interest in real property may use this method to designate the allotments, quotas, bases, and acreages for allocation to a tract of land which is sold before dividing the parent farm among the heirs in settling an estate. The designation by the administrator or executor of the estate shall not be accepted in lieu of a designation by the heirs.

(ii) Where the land of the parent farm is subject to a deed of trust, lien, or mortgage, the holder of the deed of trust, lien, or mortgage must agree to the division of allotments, quotas, bases, and acreages.

(iii) Both the tract transferred from the parent farm and the remaining portion of the parent farm shall receive or retain allotments, quotas, and bases that are consistent with allotments, quotas, and bases for similar farms in the same area having allotments, quotas, and bases with respect to the commodity or commodities involved, considering the cropland available for and adapted to producing the commodity.

(iv) Where the part of the farm from which the ownership is being transferred was owned for a period of less than three years, the designation by landowner method shall not be available with respect to the transfer unless the county committee determines that the primary purpose of the ownership transfer was other than to retain or to sell allotments, quotas, or bases. In the absence of such a determination, and if the farm contains land which has been owned for less than three years, that part of the farm which has been owned for less than three years shall be considered as a separate farm and the allotments, quotas, and bases shall be assigned to that part in accordance with paragraphs (d) through (g) of this section. Such apportionment shall be made prior to any designation of allotments, quotas, and bases with respect to the part which has been owned for three years or more.

(5) If ownership of the land is being transferred to a Federal or State government or agency thereof in accordance with the exercise of a right of eminent domain, the designation by landowner method shall not be used. If the land is acquired by eminent domain, the provisions of § 719.11 shall apply.

(6) The designation by landowner method is not applicable to:

(i) Burley tobacco quotas, or

(ii) Crop allotments or quotas which are restricted to transfer within the county by lease, sale, or by owner, when the land on which the farm is located is in two or more counties.

(7) The designation by landowner method may be applied at the owner's request to land owned by any Indian Tribal Council which is leased to two or more producers for the production of any crop of a commodity for which an allotment, quota, or base has been established. If the land is leased to two or more producers, the Tribal Council may request that the county committee divide the allotments, quotas, and bases between the applicable tracts in the manner designated by the Council. The use of this method shall not be subject to the conditions of paragraph (c)(4) of this section.

(d) *Contribution method.* The contribution method is the proration of a parent farm's allotments, quotas, and bases to each tract as the tract contributed to the allotments, quotas, or bases at the time of combination and may be used when the provisions of paragraphs (b) and (c) of this section do not apply.

(1) *Allotments and quotas.* Unless the provisions of paragraph (b) or (c) of this section apply, the contribution method shall be used to divide allotments and quotas for a farm that resulted from a combination which became effective during the 6-year period before the crop year for which the reconstitution is effective. This method for dividing allotments and quotas shall be used beyond the 6-year period if ASCS records are available to show the contribution, unless the county committee determines with the concurrence of the State committee or representative thereof, that the use of the contribution method would not result in an equitable distribution of allotments and quotas considering available land, cultural operations, and changes in type of farming. The contribution method shall not be used in cases involving the division of allotment or quota for any commodity for which there was no allotment or quota established at the time of the combination.

(2) *Bases.* (1) Unless the provisions of paragraph (b) or (c) of this section apply, the contribution method shall be used to divide crop acreage bases when:

(A) The farm being divided is the result of reconstitution by a combination which became effective with respect to the 1982 or subsequent crop year;

(B) A crop acreage base was established for one or more tracts at the time of combination; and

(C) Acreage did not exceed the crop acreage base in any year the farm was in combination.

(ii) The contribution method shall not be used to divide crop acreage bases when the county committee determines, with the concurrence of the State committee or representative thereof, that the use of the contribution method would not result in an equitable distribution of crop acreage bases considering available land, cultural operations, and changes in type of farming.

(e) *Contribution-cropland or contribution-history method.* In cases where the allotments, quotas, and bases are divided by the contribution method in accordance with paragraph (d) of this section and a division of a tract is required, the allotments, quotas, and bases shall first be apportioned among the parts of the tracts by the cropland or history method in accordance with paragraph (f) or (g) of this section and then apportioned to the tracts by the contribution method.

(f) *Cropland method.* The cropland method is the proration of allotments, quotas, bases, and acreages to the tracts being separated from the parent farm in the same proportion that the cropland for each tract bears to the cropland for the parent farm. For rice, the acreage of cropland that is available for the production of rice shall be considered the cropland of the parent farm and the separated tracts. The county committee shall verify or redetermine, if considered necessary, the cropland on the tracts of

the parent farm before making the proration. This method shall be used if the provisions of paragraphs (b) through (d) of this section do not apply unless the county committee determines that a division by the history method would result in allotments, quotas, bases, and acreages which are more representative than if the cropland method is used after taking into consideration the operation normally carried out on each tract during the respective base period for the commodities produced on the farm. Notwithstanding any other provision of this paragraph, the allotments, quotas, bases, and acreages for a farm shall be apportioned on the basis of the cropland available for, and adapted to, the production of the commodity for which an allotment, quota, and base has been established for each tract if the owners of such farm file with the county office a written agreement as to the amount of available and adapted cropland and the county committee approves such agreement.

(g) *History method.* The history method is the proration of allotments, quotas, bases, and acreages to the tracts being separated from the farm on the basis of the acreage determined to be representative of the operations normally carried out on each tract during the respective base period for the commodities. The base period for each commodity shall be determined according to the applicable commodity regulations. The county committee may use the history method of dividing allotments, quotas, bases, and acreages when it:

(1) Determines that this method would result in the proration of allotments, quotas, bases, and acreages more representative than the cropland method of division of the operation normally carried out on each tract during the respective base period for the commodity, and

(2) Obtains written consent of all interested owners to use the history method. Notwithstanding any other provision of this paragraph, the county committee may waive the requirement for written consent of the owners for dividing allotments, quotas, bases, and acreages if the county committee determines that:

(i) The use of the cropland method would result in an inequitable division of the parent farm's allotments, quotas, bases, and acreages and the use of the history method would provide more favorable results for all owners; and

(ii) With respect to bases, the use of the history method will not result in a divided tract receiving a disproportionate share of the parent farm's base because of the rotation cycle or abnormal weather during the base period.

(h) *Variation in reconstituted allotments, quotas, and bases.* Allotments, quotas, and bases apportioned among the divided tracts pursuant to paragraphs (d) through (g) of this section may be increased or decreased with respect to a tract by as much as 10 percent of the allotment, quota, or base determined under such subsections for the parent farm if:

(1) The owners agree in writing, and

(2) The county committee determines the method used did not provide an equitable distribution considering available land, cultural operations, and changes in the type of farming conducted on the farm. Any increase in an allotment, quota, or base with respect to a tract pursuant to this paragraph shall be offset by a corresponding decrease for such allotments, quotas or bases established with respect to the other tracts which constitute the farm.

(i) *Resulting farms of divisions with less than 1,000 pounds of burley tobacco.* If a farm with burley tobacco quota is divided through reconstitution and one or more of the farms resulting from the division are apportioned less than 1,000 pounds of burley tobacco quota, the owners of such farms shall take action as provided in part 723 of this chapter to comply with the 1,000 pound minimum by July 1 of the current year or the quota shall be dropped. Exceptions to this are farms divided:

(1) Among immediate family members who are related to each other as father, mother, son, daughter, brother, sister, grandfather, grandmother, grandson, granddaughter, and the spouse of such individuals;

(2) By the estate method; and

(3) When no sale or change in ownership of land occurs.

(j) *Divided acreages.* The acreages for divided farms shall be determined by using the same percentage figure as was used to apportion the allotments, quotas, and bases for the respective commodity.

(k) *Commodity yields.* For commodity yields, applicable commodity regulations shall apply.

(l) *Reconstitutions of farms under Conservation Reserve Program contract.* When a farm which is subject to a contract under the Conservation Reserve Program is reconstituted, the allotments, quotas, and bases apportioned among the resulting farms pursuant to paragraphs (b) through (g) of this section may be increased or decreased in accordance with instructions issued by the Deputy Administrator as necessary to ensure the effective operation of the Conservation Reserve Program.

CHAPTER XIV—[AMENDED]

4. Part 1413 is revised to read as follows:

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

Sec.

Authority: 7 U.S.C. 1308, 1308a, 1309, 1441–2, 1444–2, 1444f, 1445b–3a, 1461–1469; 15 U.S.C. 714b and 714c.

§ 1413.1 Applicability.

(a) The regulations in this part, which are applicable to the feed grain, rice, upland and extra long staple ("ELS") cotton, and wheat programs for the 1991 and subsequent year crops, set forth the terms and conditions under which producers of these commodities who enter into contracts with the Commodity Credit Corporation ("CCC") and comply with the contracts and the provisions of this part may qualify for program benefits.

(b) Payment limitations. In accordance with section 1001 of the Food Security Act of 1985, as amended, the total amount of certain payments which a "person" may receive in accordance with the programs set forth in this part may not exceed limitation of $50,000 for deficiency and diversion payments, and $75,000 for marketing loan gains (except honey), loan deficiency payments (except honey), and emergency compensation payments (increased deficiency payments). The manner in which a "person" is determined for these purposes is set forth at parts 1497 and 1498 of this chapter.

(c) In accordance with the regulations in part 796 of this title, payments shall not be made for a period of 5 crop years to program participants who are convicted of planting, cultivating, growing, producing, harvesting or storing a controlled substance such as marihuana.

(d) The programs are applicable throughout the United States, including Puerto Rico.

§ 1413.2 Administration.

(a) The programs will be administered under the general supervision of the Administrator, Agricultural Stabilization and Conservation Service ("ASCS") and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees (herein called "State and county committees").

(b) State and county committees, and representatives and employees thereof, do not have authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations of this part, or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulation of this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not affect adversely the operation of the program.

(f) A representative of CCC may execute a contract to participate in the wheat, barley, oats, corn, grain sorghum, upland and ELS cotton, and rice programs only under the terms and conditions determined and announced by the Executive Vice President, CCC. Any contract which is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by the Executive Vice President, CCC, shall be null and void and shall not be considered to be a contract between CCC and the operator and any other producer on the farm.

§ 1413.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration. The terms defined in part 719 of this title governing the reconstitution of farms shall also be applicable except where those definitions conflict with the definitions set forth in this section.

Acreage conservation reserve (ACR) means the acreage which is required to be taken out of production and devoted to conservation uses.

Approved nonprogram crops (ANPC) means specified crops of dry peas and lentils, that producers are allowed to plant and harvest and receive planted and considered planted credit on up to 20 percent of a program crop acreage base.

Conserving uses (CU) shall mean all uses during a year of cropland as defined in part 719 of this title except for:

(1) Acreage of crops planted for harvest or use during the current crop year, which shall include:

(i) A crop of rice, upland cotton, feed grains, wheat, or ELS cotton;

(ii) A crop of oilseeds;

(iii) Any nonprogram crop;

(iv) Industrial and other crops;

(v) Any crop for which price support is available through loans and purchases in accordance with chapter XIV of this title; and

(vi) Any acreage which is harvested for green chop, hay, silage or haylage in a State where the State committee, after consulting with interested parties, has determined that haying of conserving use acreage designated to a program crop for payment purposes under § 1413.108 shall not be permitted.

(2) Acreage which is not available to be cropped in the current year because:

(i) Of a contract under the Water Bank Program in accordance with part 752 of this title;

(ii) Of an agreement under the Great Plains Conservation Program in accordance with part 631 of this title;

(iii) Of a contract under the Conservation Reserve Program in accordance with part 704 of this title;

(iv) The acreage is designated as acreage conservation reserve (ACR) acreage for the current year; or

(v) Acreage which is subject to a restrictive easement which prohibits its use for program crops.

(3) Any land which the producer was prevented from planting to a crop of rice, upland or ELS cotton, feed grains, or wheat and which is considered as planted to such crop for the purpose of computing crop acreage bases;

(4) Any acreage which is determined to be ineligible in accordance with § 1413.62; and

(5) Any other acreage which is not available to be cropped in the current year and which is excluded in accordance with instructions issued by the Deputy Administrator.

Considered planted acreage for a crop means the following:

(1) With respect to the 1986 through 1990 crop years, the acreage of a program crop determined to be considered as planted in accordance with the regulations in this part which were applicable for such crop year; and

(2) With respect to the 1991 and subsequent crop years, the sum of the following except that for farms participating in an acreage reduction, or land diversion program for the crop, the

planted and considered planted shall be limited to the CAB for each crop for the crop year:

(i) Any acreage devoted to ACR for the crop under an acreage reduction, or land diversion program as set forth in this part or any other part;

(ii) The acreage determined to be intended to be planted to the crop but which was prevented from being planted to the crop because of drought, flood, or other natural disaster, quarantine, or other conditions beyond the control of the producer in accordance with § 1413.103;

(iii) For farms on which producers are participating in an acreage reduction program for the crop, the acreage of crops designated for planted and considered planted purposes and conserving uses credited to the crop in accordance with § 1413.100;

(iv) For farms on which the ACR acreage has been reduced in accordance with § 1413.53, the smaller of the following, as determined in accordance with instructions issued by the Deputy Administrator:

(A) The amount of the reduction in ACR acreage; or

(B) The acreage of cropland on the farm which is not considered as being planted to a program crop under any other provision of this part;

(v) For farms for which there is a Conservation Reserve Program contract in effect, an acreage equal to the amount by which any crop acreage base is reduced in accordance with § 1413.97 due to participation in the Conservation Reserve Program in accordance with part 704 of this title.

(vi) For farms for which the acreage report filed in accordance with part 718 of this title reflects zero acreage of the program crop and which are not participating in an acreage reduction, or land diversion program for the crop, the planted and considered planted crop acreage shall equal the CAB of the crop. Specific crop acreage will not be used to protect planted and considered planted acres. Producers growing fruits and vegetables, except for green manure, haying, and grazing, as specified in § 1413.11, must not have planted in excess of normal plantings of such crops for the farm. The cropping history for fruits and vegetables shall be based on the higher of the farm's history of planting such crops in the last year or 3 years preceding the current year. Zero report provisions will be permitted only if the current year acreage of fruits and vegetables for other than green manure, haying or grazing, is equal or less than the farm's history for the last year or the 3 years preceding the current year.

(vii) Any acreage devoted to approved nonprogram crops (ANPC), not to exceed 20 percent of a program crop acreage base. ANPC crops for 1991 are dry peas and lentils.

(viii) Acreage that is an amount equal to the difference between program crop permitted acres and planted acres, if the considered planted acreage is devoted to conservation uses, or the production of commodities permitted under the 0/92 or 50/92 programs for the 1991 through 1995 crops of wheat, feed grains, upland cotton, and rice;

(ix) Acreage that is an amount equal to the difference between program crop permitted acres and planted acres, if the considered planted acreage is devoted to the production of commodities as permitted by § 1413.11. Both acreages of double-cropped program crops, oilseeds, and industrial or other crops used on flex acres will be used for planted and considered planted acreage.

(3) With respect to farms owned by the Farmers Home Administration for 1991 and subsequent crop years, an acreage equal to the crop acreage base established for the farm in accordance with instructions issued by the Deputy Administrator.

Corn means field corn or sterile high-sugar corn. Popcorn, corn nuts, blue corn, sweet corn, and corn varieties grown for decoration uses are excluded.

Cotton means upland cotton and ELS cotton meeting the definition set forth in the definitions of "upland cotton" and "extra long staple (ELS)" cotton in this section, respectively, and excludes cotton not meeting such definitions.

Current year means the program year in which the crop with respect to which payment may be made under this part would normally be harvested.

Disposal deadline means the date or time by which an acreage of barley, wheat, oilseeds, or oats must be disposed of in order that such acreage will not be considered as barley, wheat, oats, or oilseeds for harvest or by which an acreage of rye or similar grain must be disposed of in order for the acreage to qualify as ACR acreage in accordance with § 1413.63 or as a conserving or conservation use.

Doublecropping means the planting and harvesting of two or more different crops on the same acreage during a crop year, as determined by the county committee in accordance with instructions issued by the Deputy Administrator.

Extra Long Staple (ELS) cotton (1) Extra long staple cotton means any of the following varieties of cotton which is ginned on a roller gin and is grown in counties specified by CCC: American-Pima; Sea Island; Sealand; all other varieties of the Barbadense species of cotton and any hybrid thereof; and any other variety of cotton in which one or more of these varieties predominate.

(2) An annual review of counties designated as suitable for the production of ELS cotton will be conducted. Counties in which ELS cotton is currently being grown and for which a roller-type gin is available will be designated or redesignated, as appropriate. For 1991–1995 such counties are: *Alabama:* Butler, Monroe; *Arizona:* Cochise, Gila, Graham, Greenlee, La Paz, Maricopa, Mohave, Pima, Pinal, Santa Cruz, Yavapai, Yuma; *California:* Fresno, Imperial, Kern, Kings, Madera, Riverside, Tulare; *Florida:* Alachua, Escambia, Hamilton, Jefferson, Madison, Marion, Santa Rosa, Suwannee, Union; *Georgia:* Berrien, Brooks, Cook, Early, Thomas; *Mississippi:* Bolivar, Carroll, Coahoma, DeSoto, Hinds, Holmes, Humphreys, Issaquena, Lafayette, Leflore, Madison, Panola, Quitman, Sharkey, Sunflower, Tallahatchie, Tunica, Warren, Washington, Yazoo; *New Mexico:* Chaves, Dona Ana, Eddy, Hidalgo, Luna, Otero, Sierra; *Texas:* Andrews, Atascosa, Bee, Bexar, Borden, Brewster, Cochran, Culberson, Dawson, Dimmit, El Paso, Frio, Gaines, Hockley, Hudspeth, Jeff Davis, Kinney, La Salle, Loving, Lynn, Medina, Pecos, Presidio, Reeves, Refugio, Terry, Uvalde, Ward, Yoakum, Zavala. Additional counties may be designated by CCC during the year as deemed appropriate, and a list of these counties will be available in State and county ASCS offices.

Farm payment acreage means the acreage used to compute deficiency payments for the crop for the farm as determined in accordance with § 1413.108 (d) and (e).

Farm program payment yield means the yield for the farm which is determined by the county committee in accordance with § 1413.6 adjusted to reflect any determinations made with respect to such yield in accordance with part 780 of this title. The 1985 farm program payment yield means:

(1) The yield for the farm which was determined by the county committee in accordance with the regulations in this part which were applicable for the 1985 crop year; or

(2) The yield for the farm which is determined in accordance with instructions issued by the Deputy Administrator if no yield was determined for the farm for the 1985 crop year.

Grain sorghum means grain sorghum of a feed grain or dual purpose variety (including any cross which, at all stages of growth, has most of the

characteristics of a feed grain or dual purpose variety). Sweet sorghum is excluded regardless of use.

Marketing year means the 12-month period beginning in the current year and ending the next year as follows:

(1) Barley, oats, and wheat. June 1–May 31.

(2) Cotton and rice. August 1–July 31.

(3) Corn and grain sorghum. September 1–August 31.

Maximum payment acres for wheat, feed grains, upland cotton, and rice means 85 percent of the crop acreage base for the crop for the farm less the required ACR.

Minor oilseeds means acreages of sunflowers, safflowers, mustard seed, flaxseed, rapeseed and canola, that are planted for harvest as seed, or volunteered and from which the seed is harvested.

Nonprogram crop means any crop other than a program crop, ELS cotton, oilseed, industrial or other crop as determined in accordance with instructions issued by the Deputy Administrator.

Oilseed means a crop of soybeans, sunflowers, rapeseed, canola, safflower, flaxseed, mustard seed, or, if designated by the CCC, other oilseeds.

Permitted acres for wheat, feed grains, upland and ELS cotton, and rice means the crop acreage base minus the required ACR.

Person means an individual, joint stock company, corporation, estate or trust, association, or other legal entity, except that two or more entities shall be combined as one person in accordance with:

(1) The regulations found at part 1497 of this chapter for the purpose of administering maximum payment limitation provisions of the Food Security Act of 1985;

(2) The regulations found at part 796 of this title for the purpose of administering the provisions of the Food Security Act of 1985 with respect to the production of controlled substances; and

(3) The regulations found at part 12 of this title pertaining to the highly erodible land and wetland provisions (commonly known as "sodbuster and swampbuster" provisions) of the Food Security Act of 1985.

Planted Acreage for a crop means the total of:

(1) The acreage planted for harvest as determined under the guidelines set forth in § 1413.4; and

(2) The volunteer acreage of the crop except that acreage which is determined not to be economically practical to harvest.

Producer means a person who, as owner, landlord, tenant, or sharecropper, shares in the risk of producing the crop, and is entitled to share in the crops available for marketing from the farm, or would have shared had the crops been produced.

Program Crop means a crop of wheat, corn, grain sorghum, oats, barley, upland cotton, and rice.

Rice means rice excluding sweet, glutinous, or candy rice such as Mochi Gomi.

Small grains means barley, oats, wheat, and rye.

Soybeans means any variety of soybeans which is planted regardless of the intended use.

Upland cotton means planted and stub cotton which is produced from other than pure strain varieties of the Barbadense species, any hybrid thereof, or any other variety of cotton in which one or more of these varieties predominate.

§ 1413.4 Determining crop acreages.

(a) The county committee shall apply the guidelines in paragraphs (b) and (c) of this section in determining crop acreages planted for harvest, as well as any further instructions which may be issued by the Deputy Administrator:

(b) The county committee shall include as crop acreage planted for harvest any of the following:

(1) The acreage harvested;

(2) The acreage of small grains which was not disposed of before the disposal deadline; and

(3) The acreage of small grains which was disposed of before the disposal deadline if such acreage qualified for a reduced yield payment in accordance with the provisions of §§ 1413.130 and 1413.131 or failed acreage credit in accordance with the provisions of § 1413.103.

(4) Volunteer acreage of a crop that is harvested;

(5) Minor oilseed acres that are planted for harvest as seed or that are volunteered and from which the seed is harvested.

(6) Acreage planted to oilseeds which is not disposed of before the disposal date established for such a crop.

(c) The county committee shall exclude as crop acreage planted for harvest any of the following:

(1) The acreage which failed and could have been replanted by the final planting date established for the crop, as determined by the Deputy Administrator, but which was not replanted;

(2) The acreage that is approved as ACR acreage in accordance with the provisions of §§ 1413.60 through 1413.72;

(3) The acreage which was disposed of without feed or other benefit (including lint benefit for cotton) and excluded by the operator on the report of acreage as provided in part 718 of this title.

(4) The acreage which was approved for wildlife food plots or planted for wildlife in accordance with instructions issued by the Deputy Administrator;

(5) The acreage that was planted so late that it could not mature and produce grain or lint and, with respect to corn and grain sorghum, was not harvested for silage;

(6) Any acreage which is planted for experimental purposes under the direct supervision of a State experimental station or a commercial company and which meets other requirements as prescribed by the Deputy Administrator;

(7) The acreage of barley, oats, wheat or rice which is left standing as a cover crop past the disposal deadline determined by the Deputy Administrator if the producer:

(i) Requests from the county committee, in writing, permission to allow such crop to be left standing before the crop reporting date;

(ii) Destroys the crop mechanically if the crop does not deteriorate before the end of the nongrazing period so that no benefit can be derived from the grain;

(iii) Does not obtain feed benefit from the crop; and

(iv) Pays the cost of a farm visit by a representative of the county committee to determine compliance with program requirements for disposal of the crop; and

(8) Any acreage designated under the Conservation Reserve Program in accordance with part 704 of this title.

(d) The county committee shall consider mixtures of crops to be the crop that is predominant in the mixture, except as follows:

(1) When a crop of barley, oats, or wheat is the first seeded crop in a mixture of small grains seeded or volunteered at different times, the mixture is considered to be the crop of barley, oats, or wheat which is first seeded.

(2) When corn or grain sorghum is mixed with another crop in the same row, the mixture shall be considered to be corn or grain sorghum, as applicable.

§ 1413.5 [Reserved]

§ 1413.6 Farm program payment yields.

(a) Rice, upland cotton, barley, corn, grain sorghum, oats, and wheat yields.

(1) The bushel or pound per acre farm program payment yield for the 1991 through 1995 crop years shall be the 1990 farm program payment yield established for the farm.

(2) If the 1990 farm program payment yield for a farm was less than 90 percent of the 1985 farm program payment yield for the farm, the deficiency payments for the crop shall be increased by the amount necessary to provide the same total return to producers as if the payment yield had not been reduced more than 10 percent below the 1985 program payment yield.

(3) If no farm program payment yield for a crop was established for the 1990 crop year, the county committee may assign a yield in accordance with instructions issued by the Deputy Administrator for any such year based upon the farm program payment yields for similar farms in the county or other surrounding area.

(4) If separate irrigated and nonirrigated farm program payment yields were established for the 1990 crop, the farm program payment yield for the 1991 through 1995 crops shall be determined by:

(i) Determining an irrigated acreage maximum (IAM) for the farm crop. This acreage represents the maximum acreage for which deficiency payments using the irrigated payment yield will be computed. The IAM shall not be changed for the 1991 through 1995 crop years. The IAM shall be computed by CCC, at the producer's option, on the basis of either 1988, 1989, or 1990 irrigated acreages on the farm, by;

(ii) Multiplying the IAM determined according to paragraph (a)(4)(i) of this section times the 1990 irrigated farm program payment yield;

(iii) Subtracting the IAM from the current year crop acreage base and multiplying the result, not less than zero, times the 1990 nonirrigated farm program payment yield; and

(iv) Totaling the results of paragraphs (a)(4) (ii) and (iii) of this section and dividing by the current year crop acreage base.

(v) If corn and sorghum CAB's are designated on a farm in accordance with § 1413.10(b), offsetting adjustments in the IAM's for corn and sorghum shall be made in proportion to the change in the CAB's. Such adjustments shall be effective for 1991, but for 1992, 80 percent of amount of the adjustment in the IAM shall be credited to the crop which was decreased in 1991, and 20 percent of the amount of the adjustment shall be credited to the crop that was increased in 1991.

(vi) If the CAB for a crop for a year is reduced because of participation in the Conservation Reserve Program in accordance with § 1413.97, the operator and owners shall determine whether or not to make an adjustment of the IAM in accordance with instructions issued by the Deputy Administrator. In no case, however, shall the IAM for the crop on the farm exceed the effective CAB for the crop after reduction for participation in the Conservation Reserve Program.

(vii) The IAM for a farm may be appealed to the Deputy Administrator only if the farm had a history of irrigating program crops before 1988 and irrigated nonprogram crops during the period 1988–90.

(b) For ELS Cotton, the yield in pounds per acre for the current year shall be the average of the actual yields per harvested acre for the farm for the 3 preceding years, adjusted as follows:

(1) If no acreage of the crop was grown on the farm for a year, a yield for the crop shall be assigned by the county committee for the farm for such year based upon the actual yields for similar farms in the county or surrounding area;

(2) If any yield in the 3-year period preceding the current year is affected adversely as the result of a natural disaster or other condition beyond the producer's control, the county committee may adjust the yield for any such year upward to the simple average of the highest 4 actual yields of the most recent 5 years; and

(3) The Deputy Administrator may prescribe a limitation on the amount by which an ELS cotton yield may be reduced from one year to the next year.

(c) For the purpose of determining the amount of any deficiency payment as provided in § 1413.108 or the amount of any disaster payment as provided in §§ 1413.130 and 1413.131, the farm program payment yield for a farm shall be reduced in accordance with instructions issued by the Deputy Administrator when the county committee determines that the producer planted the crop so that it would not produce under normal conditions.

(d) A report of production is required to determine the actual yield per harvested acre for ELS cotton for the 1991 through 1995 crop years and, if applicable in accordance with § 1413.110 of this part for malting barley. In addition, producers may submit reports of production evidence in accordance with this paragraph for crops of wheat, feed grains, upland cotton, and rice for the 1991 through 1995 crop years. Such report shall be made in accordance with instructions issued by the Deputy Administrator and on forms prescribed by the Deputy Administrator. When production has been disposed of through commercial channels, the county committee may require the operator or other producers to furnish documentary evidence in order to verify the information provided on the report. Acceptable evidence may also include such items as the original or a copy of commercial receipts, gin records, CCC loan documents, settlement sheets, warehouse ledger sheets, elevator receipts or load summaries. The county committee may also verify the evidence submitted by the producer with the warehouse, gin, or other entity which received production. If the evidence is not furnished or the information provided on the report cannot be verified, the county committee may disapprove the report of production.

(e) If the crop acreage for a year is less than 50 percent of the acreage base for the crop, the county committee may determine, in accordance with instructions issued by the Deputy Administrator, that the actual yield for the year is unrepresentatively high and reduce the yield accordingly. Such reduced yield shall be used to compute actual harvested yields for ELS cotton yields in accordance with paragraph (b) of this section.

§ 1413.7 Crop acreage bases.

(a) An acreage base shall be established for a farm for each year beginning with 1991 for barley, corn, grain sorghum, oats, rice, upland cotton, ELS cotton, and wheat.

(b) Except as provided in paragraphs (d) and (e) of this section, the crop acreage base for each program crop of wheat, barley, corn, grain sorghum, and oats, for the 1991 and subsequent crop years, shall be the number of acres that is equal to the average of the acreage planted and considered planted to the program crop for harvest on the farm in each of the 5 crop years preceding the crop year.

(c) For upland cotton and rice, except as provided in paragraphs (c)(1) and (c)(2), (d) and (e) of this section, the crop acreage base shall be equal to the average of the acreages planted and considered planted to such crop for harvest on the farm in each of the 3 crop years preceding such crop year.

(1) With respect to the 1991 crops of upland cotton and rice, if producers on a farm planted upland cotton or rice for the first time in 1989, and did not participate in the acreage reduction program established for the 1990 crop, or planted for the first time in 1990, the acreage base for the 1991 crop shall be equal to the average of the acreage planted and considered planted to such crop for harvest in the 2 preceding crop years.

(2) With respect to the 1992 crops of upland cotton and rice, if producers on a farm planted upland cotton or rice for the first time in 1990, and do not participate in the acreage reduction

program in 1991, the base for the 1992 crop shall be equal to the average of the acreage planted and considered planted in the 2 preceding years.

(d) If the county committee determines that a crop is grown on a farm in a clearly established crop-rotation pattern for 2 or more years, the acreage base established for such crop will be determined by using the average of the planted and considered planted acreages for the 3 immediately preceding crop years in the rotation cycle that correspond to the current year and in accordance with instructions issued by the Deputy Administrator.

(e) The sum of the crop acreage bases for a farm for a crop year shall not exceed the cropland for the farm, except to the extent that such excess is due to an established practice of doublecropping as determined in accordance with instructions issued by the Deputy Administrator. If the sum of such crop acreage bases exceeds the cropland, the operator will be given the opportunity to reduce one or more crop acreage bases. If the operator fails to make such a reduction, such a reduction shall be made in accordance with instructions issued by the Deputy Administrator.

(f) The crop acreage base established for a crop of ELS cotton on a farm shall be the average of the planted and considered planted acreages for ELS cotton for the 3 years immediately preceding the year prior to the current year.

§ 1413.8 Notice of crop acreage bases and yields.

The operator of a farm shall be notified in writing of the crop acreage bases and yields, which are established for the farm. However, no such notice shall be mailed to any producer who has on file in the county office a request in writing that such producer not be furnished with the notice. Such a producer shall be considered as having been notified timely and correctly of the contents of the notice.

§ 1413.9 Reconstitution of farms.

(a) Farms shall be reconstituted in accordance with part 719 of this title.

(b) The actual yield established for ELS cotton and the yield established by the county committee for any crop for a farm resulting from a combination of farms or portions of farms shall not, except for rounding, exceed the weighted average of the applicable yields established for the component portions of such farm.

(c) The weighted average of the actual yield established for ELS cotton and the yield established by the county committee for any crop for a farm resulting from a division of a farm shall not, except for rounding, exceed the applicable yields established for the parent farm before the division of such farm.

(d) In determining the weighted average yields determined in accordance with paragraphs (b) and (c) of this section, the crop acreage base for the farm for the current year shall be used.

(e) The IAM for a crop established in accordance with § 1413.6(a)(4) for a farm shall be divided among the farms resulting from the division of such farm in proportion to the CAB for such crop established for each resulting farm. However, such division may be modified in order to more fairly reflect the cropping history of the land in such resulting farms in accordance with instructions issued by the Deputy Administrator. The sum of the IAM's established for any crop for a farm resulting from a division of a farm shall equal, except for rounding, the IAM established for the parent farm before the division of such farm.

§ 1413.10 Adjusting crop acreage bases.

(a)(1) A one-time forfeiture of all or a portion of a farm's crop acreage base shall be allowed in 1991 only, at the request of the owner and operator if the request for the permanent base reduction is filed not later than the end of the 1991 acreage reduction program signup period.

(2) With respect to farms on which a base forfeiture is requested and approved, the planted and considered planted history for each of the previous years which were used to establish the crop acreage base shall be reduced by the same percentage that the 1991 base was reduced.

(b) For the 1991 crop year only, producers shall be allowed to designate corn and grain sorghum CAB's as follows:

(1) The farm must be enrolled in both the 1991 corn and grain sorghum acreage reduction programs. If the farm has only one crop acreage base, the crop acreage bases must be enrolled in the acreage reduction program in order for the producers to be eligible to designate such crop acreage base.

(2) Only the amount of CAB necessary to cover the planted acreage, the normal flex acreage, optional flex acreage, and required ACR may be designated, and, the original crop acreage base will not be reinstated by crediting planted and considered planted acreage to the contributing CAB; and

(3) Producers may request a CAB redesignation or may revise the designation at any time until the final reporting date established for the farm for corn and grain sorghum. The operator and owners must agree to the designation on a form prescribed by the Deputy Administrator.

(c) The operator of a farm may request that the acreage base for a crop of a commodity produced on a farm be established in accordance with either § 1413.7 (b) or (d) for wheat and feed grains and § 1413.7 (c) or (d) for upland cotton and rice. Such a request shall not increase that acreage base for such crop in the current year. The county or State committee may approve an increase in the acreage base established for such crop in future crop years in accordance with instructions issued by the Deputy Administrator.

(d) Crop acreage bases established in accordance with § 1413.7 may be adjusted in accordance with instructions issued by the Deputy Administrator to reflect the amount of high residue crops which must be planted by producers on the farm in order to comply with the approved conservation plan for the farm.

§ 1413.11 Planting flexibility.

(a) With respect to the 1991 through 1995 crop years, producers may plant for harvest on the established crop acreage base, a commodity, other than the specific program crop, without receiving a reduction in the crop acres planted and considered planted for the year as a result of planting the crop.

(b) Crops that may be planted for harvest on an established program crop acreage base include the following:

(1) Any program crop, except winter wheat producers selecting the special provisions for 1991 wheat specified in § 1413.50;

(2) Any minor oilseed;

(3) Any industrial or other crop as may be designated by CCC; and

(4) Any other corp, except peanuts, tobacco, wild rice, trees, tree crops, nuts, and fruits and vegetables (including fruits and vegetables grown for seed or ornamentals), which include apples, apricots, arugala, artichokes, asparagus, avocados, babaco payayas, bananas, beans (except soybeans, adzuki, faba, and lupin), beets-other than sugar, blackberries, blueberries, bok choy, boysenberries, broccoli, brussel sprouts, cabbage, calabaza, cauliflower, celeriac, celery, chayote, cherimoyas, canary melon, cantaloupes, cardoon, carrots, casaba melon, cassava, cherries, chinese bitter melon, chicory, chinese cabbage, chinese mustard, chinese water chestnuts, chufes, citron, citron melon, coffee,

collards, cowpeas, crabapples, cranberries, crenshaw melon, cucumbers, currants, daikon, dasheen, dates, eggplant, elderberries, endive, escarole, feijoas, figs, gooseberries, grapefruit, grapes, guavas, honeydew melon, huckleberries, jerusalem artichokes, kale, kiwifruit, kohlrabi, kumquats, leeks, lemons, lentils, lettuce, limequats, limes, loganberries, loquats, mandarins, mangos, marionberries, mulberries, murcotts, mustard greens, nectarines, olallieberries, onions, oranges, okra, olives, papaya, paprika, parsnip, passion fruits, peaches, pears, peas, all peppers, persimmon, persian melon, pineapple, plantain, plumcots, plums, pomegranates, potatoes, prunes, pumpkins, quinces, radiochio, radishes, raisins, rapini, raspberries, rhubarb, rutabaga, santa claus melon, salsify, savory, shallots, spinach, squash, strawberries, Swiss chard, sweet corn, sweet potatoes, tangelos, tangerines, tangos, tangors, taniers, taro root, tomatillo, tomatoes, turnips, turnip greens, watercress, watermelons, white sapote, yam, yu choy.

(5) Any crop listed in paragraph (b)(4) of this section that is for green manure, haying, or grazing.

(c) With regard to paragraphs (b) (1) through (4) of this section, the commodities that may not be planted on the program crop base acreages shall be available in the county ASCS offices.

(d) With regard to the crop base acreage, except as provided in paragraphs (c) and (e) of this section, the quantity of crop acreage base that may be planted to a commodity, other than the specific program crop, may not exceed 25 percent of the crop acreage base.

(e) If on Janaury 1 of any calendar year it is estimated by CCC that the national average price of soybeans during the subsequent soybean marketing year would be less than 105 percent of the nonrecourse soybean loan level, if soybeans were permitted to be planted on up to 25 percent of the program crop acreage base, then the maximum program crop acreage base that may be planted to soybeans may not exceed 15 percent of such acreage base.

(f) Producers of a program crop who are participating in the acreage reduction program for that program crop shall be allowed to plant such program crop in excess of the permitted acreage of the crop without losing loan, purchase, and payment eligibility for the crop if:

(1) The acreage planted to the program crop on the farm in excess of the permitted acreage does not exceed 25 percent of the crop acreage bases on the farm for other participating program crops; and

(2) The producer agrees to a reduction in the permitted acreage for the other program crops produced on the farm by the quantity equal to the overplanting.

(g) Producers of an original program crop, who plant for harvest on the established acreage base of such original program crop, another program crop, and who are not participating in an acreage reduction program for such other program crop, shall be eligible for loans, purchases, or loan deficiency payments for such other program crop on the same terms and conditions as provided in a production adjustment program established for such other program crop.

(h) Producers shall be eligible to receive loans, purchases, or loan deficiency payments in the case of other crops for which CCC has announced the availability of such benefits, if the producers:

(1) Plant such other program crop in an amount that does not exceed 25 percent of the crop acreage base established for the original program crop; and

(2) Agree to a reduction in the permitted acreage for the original program crop for the crop year.

(i) Flex acres can be double cropped, however an acreage of eligible flex, idled land or land devoted to approved conservation uses equal to the amount of acreage which is flexed must be present on the farm from the time the program crop is planted until the program crop is harvested.

§§ 1413.12—1413.48 [Reserved]

§ 1413.49 Nature of contract.

(a) The contract shall provide that the operator and each producer on the farm shall agree to limit the acreage of the crop planted for harvest and devote an eligible acreage of land to approved conservation uses as may be required by the commodity program for the crop as announced by the Secretary and as provided in this part. The contract shall provide for recording the shares for division of payments for the crop. The operator shall agree to file timely a report of acreage on Form ASCS–578 accurately listing the ACR and the acreage of the program crop(s) planted for harvest on the farm, and such other acreages as are subject to the terms and conditions of the contract.

(b) CCC shall agree that harvested production of the crop shall be eligible for loans and purchases in accordance with parts 1421 and 1427 of this chapter. CCC shall also agree that deficiency payments, if it is determined that a final deficiency payment will be greater than zero, and any applicable diversion payments shall be made to such operator and producers.

(c) The contract shall contain such other provisions as CCC determines appropriate to carry out programs established by this part.

(d) The contract shall provide for the agreement to pay liquidated damages in the event that the operator or any other producers fail to comply with their obligations under the contract. The purpose of an acreage reduction, or land diversion program is to obtain a reduction of acreage from the production of the applicable crops of commodities in order to adjust the total national acreage of such commodities to desirable goals. Once a contract has been entered into between CCC and producers, the Department and other segments of the agricultural community act based upon the assumption that the contract will be fulfilled and the reduction in acreage will be obtained. The actions of CCC include budgeting and planning for programs in subsequent crop years. A producer's failure to comply with a contract undermines the basis for these actions, damages the credibility of the Department's programs with other segments of the agricultural community, and requires additional expenditures in subsequent crop years to offset the effect of the increased production in the current crop year. While the adverse effects on CCC of the producer's failure to comply with a contract are obvious, it would be impossible to compute the actual damages suffered by CCC.

(e) Producers who elect to rescind a contract to participate in an annual program, or producers who violate a contract, and the COC makes no determination of good faith, must pay liquidated damages to CCC as provided in the CCC–477. Such producers shall be considered as nonparticipating in the acreage reduction program established for such crop.

(f) If a producer violates the provisions of this part or the CCC–477, and the COC determines a good faith effort was made to comply, standard payment reductions will apply. The reduction will be calculated as the difference between the reported and determined acreage of the crop, multiplied by the program payment yield, multiplied by 50 percent of the established price for the crop.

§ 1413.50 Contracting procedures.

(a)(1) Acreage reduction and paid land diversion programs. Eligible producers may offer to enter into a

contract to participate with CCC by executing a contract and submitting it to the county ASCS office where the records for the farm are maintained not later than a date specified in the announcement of the sign-up period for the acreage reduction and paid land diversion program.

(2) If an acreage reduction program is in effect for wheat and feed grains and such producers devote a portion of the maximum payment acres for wheat and feed grains equal to more than 8 percent of such acreage to conservation uses, including the planting of oilseeds, such as canola, flaxseed, mustard seed, rapeseed, safflower, and sunflowers, and industrial or other crops as designated by CCC:

(i) Such portion of the maximum payment acres in excess of 8 percent of such acreage devoted to conservation uses shall be considered to be planted to wheat, barley, oats, grain sorghum, or corn, as designated by the producer.

(ii) Producers devoting a portion of the maximum payment acres to conservation uses, including the planting of oilseeds as designated by the Secretary, shall receive deficiency payments on the considered planted acreage at a per bushel rate that will be established by the Secretary, except that the rate may not be established at less than the projected deficiency payment rate.

(iii) This provision shall be implemented in such manner that any adverse effect on agribusiness and other agriculturally related economic interests shall be minimized within any county, state or region. The total acreage that may be taken out of production may be restricted, considering the total quantity of acreage that has been removed or will be removed from production under other price support, production adjustment, or conservation program activities.

(3) If an acreage reduction program is in effect in upland cotton and rice and producers devote a portion of the maximum payment acres for upland cotton and rice equal to more than 8 percent of such acreage to conservation uses, including experimental or industrial crops as designated by the CCC:

(i) Such portion of the maximum payment acres in excess of 8 percent of such acreage devoted to conservation uses shall be considered to be planted to upland cotton or rice for the purpose of determining the acreage on the farm required to be devoted to conservation uses; and,

(ii) Producers shall be eligible for payments with respect to such acreage, provided that the acreage producers plant to upland cotton and rice for harvest, or the sum of the acreage planted for harvest plus the acreage credited as prevented planted under § 1413.103 equals at least 50 percent of the maximum payment acres for the farm.

(iii) Producers devoting a portion of the maximum payment acres to conservation uses shall receive deficiency payments on the considered planted acreage at a per bushel or pound rate that will be established by the Secretary, except that the rate may not be established at less than the projected deficiency rate.

(4) Producers may plant, subject to terms and conditions prescribed by CCC, all or any part of an acreage otherwise required to be devoted to conserving uses as a condition for receiving payments under the "0/92 or 50/92" provisions of paragraphs (a) (2) and (3) of this section, to any crop as may be authorized by CCC. Such list of authorized crops, if any, will be available in the county ASCS offices.

(5) With respect to the 1991 winter wheat crop that was planted on a farm in 1990 in an amount equal to or greater than .01 acre, a producer may, when participating in the production adjustment program for the 1991 crop, participate in the program with the following modifications:

(i) The deficiency payment rate shall be the amount that the established target price of wheat exceeds the higher of:

(A) The lesser of the national average market price received during the marketing year for the crop, or the national average market price received during the first 5 months of the marketing year for the crop, plus 10 cents per bushel, or

(B) The loan level determined for the crop, prior to any adjustments made by the Secretary with regard to the stocks to use ratio of the commodity for the marketing year of the crop.

(ii) The payment acres shall be the lesser of:

(A) The number of acres of the crop planted to the crop for harvest within the permitted acres, or

(B) 100 percent of the crop acreage base for the crop for the farm less the quantity of ACR.

(iii) The deficiency payments shall be computed in accordance with § 1413.101(c) and shall be issued as provided in § 1413.109.

(6)(i) The producer must be a person who shares in the risk of producing the program crop produced in the current year, or shares in the proceeds therefrom, on the farm for which the contract is submitted, or would have shared in the crop if it had been produced on such farm in the current year. The county committee shall determine who is a person in accordance with parts 1497 and 1498 of this chapter and instructions issued by the Deputy Administrator.

(ii) A minor will be eligible to participate in the program only if one of the following conditions exists:

(A) The right of majority has been conferred upon the minor by court proceedings;

(B) A guardian has been appointed to manage the minor's property and the applicable documents are signed by the guardian; or

(C) A bond is furnished under which a surety guarantees to protect CCC from any loss incurred for which the minor would be liable had the minor been an adult.

(b) The signup period determined and announced in accordance with paragraph (a) of this section may be extended for a producer or for all producers within a designated area under the terms and conditions announced by CCC in the event of the occurrence of a condition which is beyond the control of producers if CCC determines that such an extension will not affect adversely the administration of the respective program.

§ 1413.51 Required acreage reduction.

(a) The Secretary will announce:

(1) Whether an acreage reduction program is in effect for a crop year for a specific crop;

(2) The percentage reduction to be applied to the crop acreage base to determine the amount of required reduction; and

(3) Other requirements of the program for the year.

(4) For wheat, feed grains, upland cotton and rice, the operator and each producer agree to devote to approved conservation uses an acreage of eligible land equal to the product of the acreage reduction factor announced by the Secretary, times the crop acreage base.

(5) For ELS cotton, the acreage of eligible land devoted to conservation uses shall be determined by dividing the product obtained by multiplying the number of acres required to be withdrawn from the production of ELS cotton, times the number of acres planted to such commodity, by the number of acres authorized to be planted to ELS cotton under the limitation established by the Secretary.

(b) Producers of the applicable crop or crops shall:

(1) Not knowingly exceed the permitted acreage, which is the acreage base established for the crop minus the

sum of the acreage required to be devoted to ACR in accordance with an acreage reduction program and any acreage which is required to be devoted to ACR in accordance with a land diversion program, plus any acreage planted in accordance with program provisions specified in § 1413.11;

(2) Devote to conservation uses as prescribed in §§ 1413.60 through 1413.72 an acreage equal to the acreage reduction program percentage times the crop acreage base; and

(3) Otherwise comply with all program requirements.

§ 1413.52 Land diversion.

(a) The Secretary will announce:

(1) Whether a land diversion program is in effect for a crop year for a specific crop;

(2) The amounts payable to producers, which may be determined by the submission of bids by the producers for the contracts, in such manner as may be prescribed or deemed appropriate. In accepting contract offers, the extent of the diversion to be undertaken by the producers and the productivity of the diverted acreage shall be considered;

(3) Whether advance program payments will be available;

(4) Whether compliance with the land diversion requirement is required in order for the producer on the farm to be eligible for loans, purchases and payments for the crop; and

(5) Other requirements of the program.

(b) In order to be eligible for any land diversion payment, producers of the applicable crop or crops shall:

(1) Comply with all other program requirements for the crop;

(2) Devote to conservation uses as prescribed in §§ 1413.60 through 1413.72 an acreage which is equal to the required diverted acreage.

(c) The total acreage to be diverted under such agreements in any county or local community shall be limited so as to not adversely affect the economy of the area.

§ 1413.53 Reduction in ACR.

(a) A producer whose payments under the feed grain, rice, upland and ELS cotton, or wheat programs may be reduced because of the application of the provisions with respect to the payment limitation as specified in accordance with § 1413.1 may request a downward adjustment in the amount of acreage which is otherwise required to be devoted to conservation uses on the farm. The request shall be in writing and shall be filed with the county committee on a form and by a date prescribed by the Deputy Administrator. If such a producer is sharing in program payments with respect to farms in two or more counties, it shall be the producer's responsibility to furnish information concerning the producer's participation in the other counties to the county committee with which the application for the downward adjustment is filed.

(b) Any reduction in ACR acreage required under this section shall be computed by:

(1) Estimating the producer's total payments which would be received under the feed grain, rice, upland and ELS cotton, and wheat program on all farms, excluding crops which are enrolled in a program, but with respect to which deficiency payments are not paid,

(2) Determining the percentage by which the estimated total payments must be reduced in order to comply with the payment limitation, and

(3) Multiplying such percentage by the number of acres in the producer's portion of the ACR acreage which is required for the farm or farms participating in the programs. When both land diversion and acreage reduction programs are in effect, the acreage required to be devoted to ACR in accordance with the acreage reduction programs shall be reduced to zero before the acreage to be devoted to ACR in accordance with the land diversion acreage is reduced.

(c) If the producer is participating in the acreage reduction program on two or more farms, the producer may elect to have the reduction in ACR acreages under this program, but not under the land diversion programs, divided among the farms in such proportion as the producer may designated.

§ 1413.54 Acreage reduction program provisions.

(a) The acreage reduction factor for the wheat, feed grains, upland and ELS cotton and rice programs are:

(1) 1991 wheat, 15 percent;

(2) 1991 corn, grain sorghum, and barley, 7.5 percent;

(3) 1991 ELS and upland cotton, 15 percent;

(4) 1991 rice, 5 percent.

(b) Target price payments shall not be available with respect to producers of the 1991 crops of wheat, feed grains, upland cotton and rice.

(c)(1) Acreage designated as ACR under the 1991 wheat, feed grains, upland cotton and rice programs may not be devoted to oilseeds, industrial or experimental crops, oats, or any other crop and must be devoted to approved uses as otherwise provided in this part.

(2) Acreage designated as CU for payment acreage under the "0/92" provisions of the 1991 through 1995 wheat and feed grains programs as provided in § 1413.50 may be planted to sunflowers, rapeseed, canola, safflower, flaxseed, and mustard seed ("minor oilseeds"). Such acreage may be doublecropped with other minor oilseeds.

(3) Acreage designated as CU for payment acreage under the "0/92" and "50/92" provisions of the 1991 through 1995 wheat, feed grains, upland cotton, and rice programs as provided in § 1413.50 may not be planted to industrial, experimental, or other crops except as provided in paragraph (c)(2) of this section.

(d) Paid land diversion program payments shall not be made available to producers of the 1991 crops of wheat, feed grains, ELS and upland cotton, and rice.

(e) With respect to the 1991 through 1995 crop years, in order to receive feed grain loans, purchases, and payments in accordance with this part and part 1421 of this chapter, producers of malting barley must comply with the acreage reduction program requirements of this part.

§§ 1413.55—1413.59 [Reserved]

§ 1413.60 Basic rules for ACR acreage.

Except as set forth in §§ 1413.65 through 1413.72, or as announced by the Secretary, ACR acreage which is designated in accordance with the provisions of §§ 1413.51 through 1413.52 must:

(a) Be eligible land in accordance with § 1413.61;

(b) Be devoted to approved cover or practices in accordance with the provisions of § 1413.63;

(c) Not be grazed or harvested, except as provided in § 1413.64; and

(d) Be cared for in accordance with the provisions of § 1413.65.

§ 1413.61 Eligible land.

(a) For 1991 and subsequent crop years, land designated as ACR acreage must:

(1) Meet the provisions of paragraph (b)(1) of this section, or for 1991 only, (b)(2), of this section, and

(2) either of the provisions of paragraph (b)(3) or (b)(4) of this section.

(b) ACR acreage must be cropland that:

(1) Meets the minimum size and width requirements of 5.0 acres and 1.0 chain (66 feet), respectively, except:

(i) One area per farm may be designated that is smaller than the requirements to complete the balance of required ACR;

(ii) Entire permanent fields may be designated for ACR that are less than 5.0 acres and 1.0 chain;

(iii) Contiguous and noncontiguous strips, including endrows, that are part of an approved conservation plan, which do not meet the minimum size (5.0 acres) and width (1.0 chain 66 feet) may be designated as ACR if they are at least 33 feet wide; and,

(iv) Contiguous and noncontiguous strips, including endrows, that are planted in a perennial cover and at least 33 feet wide, may be designated as ACR.

(2) For 1991 only, areas that do not meet the minimum size and width requirements in paragraph (b)(1) of this section may be designated as ACR if all other eligibility requirements are met. The land is:

(i) Land between terraces, terrace to terrace, or terrace to other field boundaries;

(ii) Land which will be used to promote highway safety or improve highway scenery;

(iii) Land between rows of trees, drip area to drip area, in orchards;

(iv) A terrace or erosion control strip at least 160 inches wide established on highly erodible land, if required by the conservation plan; or

(v) A wildlife food plot or habitat.

(3) Was devoted to a small grain, row crop, or other crop planted annually, in 1 of the last 5 years; or,

(4) Was cropland designated as ACR or CU for payment in any or all of the previous 5 years. Such cropland is eligible for ACR designation in the current crop year if the provisions of paragraph (b)(1) of this section, or for 1991 only, (b)(2) of this section is met.

§ 1413.62 Ineligible land.

Land designated as ACR acreage may not be land:

(a) That is designated:

(1) Under the Water Bank Program in accordance with part 752 of this title;

(2) Under the Conservation Reserve Program set forth in accordance with part 704 of this title;

(3) As land devoted to orchards, vineyards, nursery stock, or Christmas trees that were not planted in the current year or the fall of the preceding year;

(4) As ACR acreage for another program crop;

(b) For which a deficiency payment is or could be made for the program crop;

(c) That is acreage credited to the crop in accordance with § 1413.100;

(d) That the producer does not have the authority to use, such as highway, railway, or other right-of-ways, airport buffer strips, or easements prohibiting production of crops;

(e) That is prohibited from being cropped under the Great Plains Conservation Program in accordance with part 631 of this title;

(f) That is a converted wetland, as defined in part 12 of this title, land planted in violation of highly erodible land or wetland provisions, or highly erodible land, as defined in part 12 of this title, that does not have an approved Conservation Plan being actively applied;

(g) That the producer does not own, lease, or sharecrop;

(h) That is subject to a restrictive easement which prohibits its use for program crops.

§ 1413.63 Approved cover crops and practices.

(a) (1) Producers participating in an acreage reduction program for a program crop shall be required to plant 50 percent, but not exceeding 5 percent of the crop acreage base established for the crop, of the ACR acreage (or more at the producer's option) to an annual or perennial cover;

(2) This requirement shall not apply to arid areas, including summer fallow areas, as determined by CCC;

(3) If a producer elects to establish a perennial cover, and;

(i) The cover is capable of improving water quality or wildlife habitat, CCC shall make available cost-share assistance of not more than 25 percent of the approved cost of establishing the cover, and;

(ii) If the producer receives cost-share assistance with respect to the cover, the producer shall agree to maintain the perennial cover and designate the acreage as ACR for a minimum of 3 years;

(iii) If cost-share is received in a year, cost-share is not available on any other acreage on the farm during the maintenance lifespan of the practice, unless the cover failed, or the required perennial cover requirements increase in subsequent years.

(4) CCC may permit all or part of the acreage to be planted to any crop as may be authorized by CCC. Such list of authorized crops, if any, will be available in the county ASCS office.

(5) State committees shall establish a final seeding date for cover crops on ACR.

(6) The ACR acreage may be seeded in the fall to crops which are of a type that when seeded in the fall in the county in which the farm is located normally attain maturity in the next calendar year;

(7) The ACR acreage may be tilled in the fall for spring planting and left bare only if approved in accordance with paragraph (c) of this section.

(b) Nationally approved cover crops and practices. The following are nationally approved cover crops and practices for ACR acreage:

(1) Annual, biennial, or perennial grasses and legumes, excluding soybeans, corn, popcorn, sweet corn, grain sorghum, cotton, fruits and vegetables.

(2) Barley, oats, rice, wheat, and other small grains planted and disposed in accordance with instructions issued by the Deputy Administrator.

(3) Crop residue from using "no till" or "minimum till" practices.

(c) Locally approved cover crops. Cover crops and practices that will protect the ACR acreage from wind and water erosion throughout the calendar year may be approved on a State or local basis as follows:

(1) The county committee, in consultation with the district conservationist of the Soil Conservation Service ("SCS"), may recommend the cover crop or practice. The State committee shall consult with appropriate wildlife agencies and organizations and other interested groups to determine whether additional practices that further the goals of such organizations and groups can be developed.

(2) The cover crops or practices recommended shall not include:

(i) The growing of soybeans, and cotton.

(ii) Fruits and vegetables for uses other than green manure, haying and grazing.

(iii) The growing of corn, popcorn, and grain sorghum unless close sown and the producer agrees not to hay or graze such crops.

(iv) Control measures which are more costly to the producer than other similar alternatives normally accepted for the area.

(v) Control measures which are inconsistent with erosion control measures normally used on other cropland in the area.

(3) Residue and stubble of destroyed program crops may be recommended as locally approved cover, provided that the crop residue, as opposed to regrowth, shall not be grazed after the end of the nongrazing period announced by the county committee in accordance with § 1413.64(a).

(4) The State committee shall approve the cover crops or practices after consulting the SCS State Conservationist as to whether the practices will sufficiently protect the land from wind and water erosion.

§ 1413.64 Use of ACR acreage.

(a) Haying and/or grazing of acreage devoted to conservation uses and designated as ACR shall be allowed except for a consecutive 5-month period between April 1 and October 31 as established by the State committee. Locally approved covers shall not be hayed or grazed if such cover consists of program crops or mixtures containing program crops.

(b) Except as provided in paragraphs (a), (c) and (e) of this section, harvesting on ACR acreage is prohibited for all crops:

(1) In the current year; and

(2) After December 31 of the current year if the crop would normally mature and be harvested in the current year.

(c) Removing catfish, crayfish, and other fish for commercial purposes is prohibited during any period during which haying and/or grazing is prohibited in accordance with paragraph (a) of this section.

(d)(1) Land that has been converted to water storage uses shall be considered to be devoted to conservation uses if the land had been planted to wheat, feed grains, cotton, rice, or oilseeds in at least 3 of the 5 years immediately preceding the conversion. The land shall be considered to be devoted to conservation uses for the period the land remains in water storage uses, but not to exceed 5 years.

(2) Land converted to water storage uses may not be devoted to any commercial use, including commercial fish production; and,

(i) the water stored on the land may not be ground water; and,

(ii) the farm on which the land is located must have been irrigated with ground water in at least 1 of the last 5 crop years.

(3) The ACR acreage may be used for noncommercial recreation, temporary location of beehives, or for home gardens. Fees may be charged for hunting and fishing.

(e) Emergency uses. Notwithstanding the provisions of § 1413.64 (a) and (b), the Deputy Administrator may authorize, on a county by county basis, the use of the ACR acreage for haying or grazing under such conditions as may be prescribed when abnormal weather conditions cause a critical shortage of hay and forage in the county. Acreage that is irrigated or could be irrigated, that is not planted to alfalfa, may not be excluded from emergency uses.

§ 1413.65 Control of erosion, insects, weeds, and rodents on ACR acreage.

(a) The farm operator shall use needed control measures in a timely manner to control erosion, insects, weeds, and rodents on the ACR acreage.

(b) Control measures for weeds need only be sufficient to prevent the spread of weeds. These measures must be consistent with control practices normally carried out on similar cropland in the area. It is not intended that control practices be more costly to the producer than what is normal for the area.

(c) The county committee shall prescribe and require additional control measures upon a determination that those used by the producer are inadequate. When clipping or mowing to control weeds is prescribed, the county commitee shall specify a time for clipping or mowing which is compatible with wildlife practices, but such time must be before the time such weeds form seeds.

§ 1413.66 Orchards.

Unless the State committee determines otherwise, the entire area of an orchard or nursery meeting the eligibility requirements specified in § 1413.61 is eligible to be designated as ACR, if the trees were planted in the current year or fall of the previous year, but not in any succeeding year.

§ 1413.67 Land going out of agricultural production.

If the county committee determines that the designated ACR acreage may be devoted to a nonagricultural use during the current year, the operator must establish that the land, in the absence of the program, would have been planted to a program crop.

§ 1413.68 Wildlife food plots or habitat.

(a) Land devoted to wildlife food plots that meets requirements determined by the State committee, in consultation with wildlife agencies, is eligible to be designated as ACR acreage. Program crops may be grown on such acreage and small grains need not be disposed of by the disposal deadline. However, there must also be compliance with the requirements of § 1413.61.

(b) Land which is owned or operated by State or Federal agencies and which is planted to grain for wildlife for the agency is not eligible to be designated as ACR acreage.

§ 1413.69 Insufficient ACR acreage.

Before the final date for reporting crop acreage as provided in part 718 of this title, producers may destroy crops on an acreage to designate all or part of the destroyed acreage as ACR acreage. The acreage must be eligible land as provided in § 1413.61. The acreage shall be devoted to an approved cover or practice in accordance with the provisions of § 1413.63 as soon as practicable after destruction of the crop.

§ 1413.70 Destroyed crop acreage.

(a) Operators may substitute for the ACR acreage already designated and reported on Form ASCS—578 acreages of small grains or row crops that were destroyed. However, with respect to such substitution of acreages, the following conditions are applicable.

(1) The operator must request the substitution in writing and agree that there will be no deficiency payment made with respect to the production from the substituted acreage;

(2) The land must be determined to be eligible as provided in § 1413.61; and

(3) The land must be devoted to an approved cover or practice in accordance with the provisions of § 1413.63 as soon as practicable after the substitution.

(b) The substitution of acreages cannot be used to offset a payment reduction as a result of the application of the failure to comply fully provisions of part 791 of this title.

§ 1413.71 Late harvesting.

Harvesting of a crop on ACR acreage may be permitted when all of the following apply:

(a) The crop matured in the preceding year; and

(b) The county committee determines that:

(1) The crop was not harvested because of adverse weather or other conditions beyond the producer's control; and

(2) Harvesting will be completed as soon as practicable.

§ 1413.72 Skip rows.

The acreage between rows of the crop planted in an established skip row pattern as defined in part 718 of this title is eligible for designation as either ACR or acreage with respect to which deficiency payments may be earned if:

(a) The skip is at least the larger of 4 normal rows or 150 inches from plant to plant, and

(b) The land meets the requirements for eligible land as set forth in §§ 1413.61 and 1413.79, except for the minimum size and width requirements.

(c) The area to be skipped between planted rows when classifying row crop acreage planted and the skipped area shall not be less than 30 inches.

(d) For 1991 only, the minimum size and width requirements in § 1413.79(b) for CU do not apply.

§§ 1413.73–1413.78 [Reserved]

§ 1413.79 Eligible CU for payment land.

(a) For 1991 and subsequent years, land designated as CU for payment acreage must:

(1) Meet the requirements of paragraph (b)(1) of this section; and,

(2) Either of the provisions of paragraph (b)(2) or (b)(3) of this section.

(b) CU for payment must be cropland that:

(1) Meets the minimum size and width requirements of 5.0 acres and 1.0 chain (66 feet), respectively; except:

(i) One area per farm may be designated that is smaller than the requirements, to complete the balance of required CU for payment;

(ii) Entire permanent fields may be designated for CU for payment that are less than 5.0 acres and 1.0 chain.

(iii) Contiguous and noncontiguous strips, including endrows, that are part of an approved conservation plan, which do not meet the minimum size (5.0 acres) and width (1.0 chain 66 feet) may be designated as CU for payment if the strips are at least 33 feet wide.

(iv) Contiguous and noncontiguous strips, including endrows, that are planted in perennial cover and are at least 33 feet wide may be designated as CU for payment.

(v) For 1991 only, the minimum size of 5.0 acres and width of 1.0 chain (66 feet) provision does not have to be met.

(2) Was devoted to a small grain, row crop, or other planted annually, in 1 of the last 5 years.

(3) Was cropland designated as CU for payment or ACR acreage in any or all of the previous 5 years. Such land may be designated as CU for Payment in the current crop year if the requirements in paragraph (b)(1) (i) through (iv) of this section or, for 1991 only, (b)(1)(v) of this section are met.

(c) Erosion, insects, weeds, and rodents will be required to be controlled in a timely manner on CU for payment acreage as is required for ACR acreage in accordance with § 1413.65.

(d) For 1991 only, the minimum size and width requirements of paragraph (b) of this section do not apply.

§ 1413.80 Ineligible CU for payment land.

Cropland designated as CU for payment may not be land that:

(a) Is devoted in the current year to program or nonprogram crops.

(b) Is devoted to CU crops that are harvested for seed in the current year.

(c) Is credited for prevented planted acreage in the current year.

(d) Is devoted to orchards, vineyards, nursery stock, or Christmas trees that were not installed in the current year or the fall of the preceding year.

(e) That the producer does not have the authority to use, such as right-of-ways, buffer strips, or easements prohibiting production of crops.

(f) That is hayed or grazed in violation of the contract.

(g) That is a converted wetland, as defined in part 12 of this title, or highly erodible land, as defined in part 12 of this title, that does not have an approved Conservation Plan being actively applied.

§§ 1413.81–1413.96 [Reserved]

§ 1413.97 Participation in Conservation Reserve Program.

(a) Whenever the owner or operator of a farm signs a contract to participate in the Conservation Reserve Program in accordance with sections 1231–1245 of the Food Security Act of 1985:

(1) The total of the crop acreage bases, acreage allotments, and marketing quotas established for the farm for the first crop year for which such contract is applicable shall be reduced in the same proportion as the ratio of the cropland taken out of production under the conservation reserve contract to the total cropland on the farm. If acreage bases, acreage allotments, and marketing quotas were established for more than one crop, the owner or operator shall determine which acreage bases, acreage allotments, or marketing quotas shall be reduced to achieve the total reduction required.

(2) The crop acreage bases established for the farm for each succeeding crop year for which the conservation reserve contract is in effect shall be:

(i) Computed in accordance with § 1413.7; and

(ii) Then reduced in accordance with instructions issued by the Deputy Administrator.

(3) The amount of the reduction made in accordance with paragraphs (a) (1) and (2) of this section shall be considered as planted to the applicable crop for the purpose of establishing future crop acreage bases.

(4) If there is a contract in effect between CCC and the producers with respect to the annual program for one or more of the crops for which the acreage base is reduced in accordance with paragraph (a)(1) of this section, the operator and producers shall have the option of:

(i) Complying with the contract using the acreage base for the crop after such reduction is determined; or

(ii) Canceling such contract without liability for liquidated damages.

(b) After the end of the period of a conservation reserve contract, the crop acreage bases for the next crop year shall be computed in accordance with § 1413.7.

§ 1413.98 Compliance with part 12 of this title, Highly erodible land and wetland conservation provisions.

Whenever a producer, or a person affiliated with such producer, is determined to be ineligible in accordance with part 12 of this title, such producer shall be ineligible for any payments under this part and shall refund any payments already received in accordance with § 1413.101(e).

§ 1413.99 [Reserved]

§ 1413.100 Determination of farm program acreage.

(a) As a condition of eligibility for loans, purchases and payments in accordance with the provisions of this part, the operator must submit a report of acreage in accordance with part 718 of this title that lists all crops and land uses which are subject to the acreage reduction program contract for all cropland on the farm for the crop year. Except as otherwise provided in this part, all acreage determinations shall be made in accordance with part 718 of this title.

(b) The operator shall designate on the report of acreage filed in accordance with part 718 of this title whether the acreage of crops designated for P&CP credit and conserving uses on the farm shall be credited to one or more of the crops of wheat, feed grains, upland cotton, and rice. If the operator fails to so designate such acreages to such crops by the final reporting date established for the farm, the county committee shall allocate the acreage of crops designated for P&CP credit and conserving uses in accordance with instructions issued by the Deputy Administrator.

(c) With respect to farms with repeat cropping, which is the subsequent planting of the same crop on the same acreage after harvesting the original crop in the same crop year, the total plantings of the crop shall be considered as the crop acreage. Temporary yield reductions may be made by the county committee with respect to the acreage of the second planting if the yield originally established for the farm was based on a history of a single planting.

(d) Producers planting a nonparticipating crop to an acreage that is less than the crop acreage base shall not be allowed to use CU acreage to receive planted and considered planted credit for the crop.

(e) On a farm, the sum of the acreage of crops designated for planted and considered planted credit and conserving uses credited to the crop shall not exceed the difference between the CAB for the crop for the crop year and the sum of:

(1) The acreage of the crop planted for harvest;

(2) The acreage which the county committee determines, in accordance with § 1413.103, the producer was prevented from planting to the crop due to a natural disaster or similar condition beyond the producer's control; and

(3) The acreage which is designated as ACR for the crop.

§ 1413.101 General payment provisions.

(a) The payment of any amount which is due the operator or other producers on a farm shall be made only after the producers are determined to be in full compliance with the contract and applicable regulations.

(b) Except as otherwise provided herein and in part 791 of this title, no payment shall be made for a farm or to a producer when there is failure to comply fully with the regulations set forth in this part.

(c) Subject to the provisions of the maximum payment limitation in accordance with §1413.1 and the payment limitation regulations found at parts 1497 and 1498 of this chapter, the total earned payment due each eligible producer under the program shall be determined by multiplying the payment acreage times the payment yield times the payment rate times the producer's share. If the producer is a partnership or joint venture, the payment calculation shall include the member's share of the partnership or joint venture to determine the amount charged against the member's payment limitation.

(d) If a producer declines to accept, or is determined to be ineligible for all or any part of the producer's share of the payment computed for the farm in accordance with the provisions of this section,

(1) Such payment or portions thereof shall not become available for any other producer on the farm, and

(2) The producer who declined payment, or the producer's successor-in-interest, may request payment no later than December 31 of the year payment is earned.

(e) A person shall refund to CCC any amounts representing payments that exceed the payments determined by CCC to have been earned under the program authorized by this part. A late payment charge may be assessed in accordance with the provisions of part 1403 of this chapter. Part 1403 of this chapter shall be applicable to all unearned payments.

(f) Whenever two or more individuals or entities are considered to be one person in accordance with the maximum payment limitation regulations found at parts 1497 and 1498 of this chapter, the controlled substance regulations found at part 796 of this title, or affiliated persons in accordance with the highly erodible land and wetland conservation regulations found at part 12 of this title:

(1) Any payment issued to one such individual or entity in accordance with this part shall be considered a payment to all such individuals and entities; and

(2) Each individual or entity shall be jointly and severally liable for refunding the amounts of any unearned payments or overpayments in accordance with paragraph (e) of this section and for paying any liquidated damages applicable under the contract.

§ 1413.102 Advance payments.

(a) In order to receive an advance deficiency or diversion payment authorized for a crop:

(1) The operator and other producers on a farm must:

(i) Enter into a contract with CCC to participate in the acreage reduction and land diversion program, if applicable;

(ii) Request the advance payment during the program enrollment period; and

(2) The farm must not have been determined to be out of compliance with any of the requirements of the contract or the program at the time of payment.

(b) Advance deficiency payments will be made for crops as announced by the Secretary and shall be computed using the intended acreages of the crop furnished by the operator during the enrollment period. The announcement will specify the rates, manner, and time of payment.

(c) Advance diversion payments will be made for crops as announced by the Secretary. The announcement will specify the rates, manner, and time of payment.

(d)(1) The provisions of § 1413.108 (a) or (b) are applicable to the amounts of any advance diversion or deficiency payments which are not earned by the producer. However, no late payment charge shall be assessed with respect to producers who have otherwise complied with the requirements of the program for the corp but have failed to refund to CCC the amount of the advance deficiency payments before the end of the marketing year for the crop when the final deficiency payment rate determined under § 1413.108(a) is zero or is less than the advance deficiency payment rate.

(2) In addition to the provisions of § 1413.108 (a) or (b), interest shall be charged on the amount of the advance payment if a producer obtains an advance deficiency or land diversion payment, or both, for a crop on a farm but does not comply with the requirements for any acreage reduction or land diversion program required for the crop on the farm for the year. Interest shall be computed from the date of issuance of the payment to the earlier of the date such payment is refunded or the date of the first demand letter. The rate of interest shall be the rate of interest in effect for CCC commodity loans on the date of the issuance of the payment.

§ 1413.103 Disaster credit.

(a) In order to obtain failed acreage or prevented planting credit, the operator must file an application for disaster credit on a form prescribed by the Deputy Administrator. Such application shall be filed with the county committee by a date prescribed by the Deputy Administrator.

(b) In cases of preventing planting, the county committee shall approve prevented planting credit for the acreage which the committee determines that the producer intended to plant to the crop and a natural disaster or other condition beyond the producer's control prevented the planting of the crop.

(c) In cases of failed acreage, the county committee shall approve failed acreage credit for the acreage which the committee determines was planted to the crop with the reasonable expectation of producing a crop and was damaged or destroyed by a natural disaster or other condition beyond the prooducer's control such that harvesting the crop is not feasible or economical.

(d) When prevented planting or failed acreage credit for a crop is approved for an acreage:

(1) And producers on the farm are participating in the production adjustment program for such crop, such credit shall be limited to the permitted acreage for such crop.

(2) Except for established practices of doublecropping as prescribed by the Deputy Administrator, any later crop planted on such acreage shall not be considered to be planted for any purpose under the programs authorized by this part and parts 1421 and 1427 of this chapter regardless of the permitted acreage for such crop.

§ 1413.104 Established (target) prices.

(a) The established prices for the 1991 through 1995 crops shall be as follows:

(1) Barley—$2.36/bu.

(2) Corn—$2.75/bu.
(3) Upland cotton—$0.729/lb.
(4) Grain sorghum—$2.61/bu.
(5) Oats—$1.45/bu.
(6) Wheat—$4.00/bu.
(7) Rice—$0.1071/lb.
(8) ELS cotton—1991—$0.996/lb.

(b) ELS cotton—1992–1995 will be established as 120 percent of the loan rate for ELS cotton.

§§ 1413.105–1413.107 [Reserved]

§ 1413.108 Deficiency payments.

(a) The deficiency payment rate for the 1991 through 1995 crops of upland and ELS cotton shall be the amount by which the established (target) price exceeds the higher of:

(1) The national average loan rate established for the crop; or

(2) The national weighted average market price received by producers for the crop during:

(i) The calendar year that includes the first 5 months of the marketing year for upland cotton; and

(ii) The first 8 months of the marketing year for ELS cotton.

(b) (1) The deficiency payment rate for the 1991, 1992, and 1993 crops of wheat (except for producers who elect to receive, with respect to the 1991 crop of winter wheat, deficiency payments calculated in accordance with paragraph (b)(2) of this section), feed grains (except as provided for malting barley producers in accordance with § 1413.110), and rice, shall be the amount by which the established (target) price exceeds the higher of:

(i) The national average price support level established for the crop; or

(ii) The national weighted average market price received by producers for the crop during the first 5 months of the marketing year. For barley, the national weighted average market price shall include only prices received by producers of barley sold primarily for feed purposes.

(2) The deficiency payment for the 1994 and 1995 crops of wheat (and 1991 crop winter wheat producers who elect to receive deficiency payments under this paragraph), feed grains, and rice shall be the amount by which the established (target) price exceeds the higher of the:

(i) Lesser of:

(A) The national weighted average market price received by producers during the marketing year for the corp.

(B) The national weighted average market price received by producers during the first 5 months of the marketing year for the crop plus:

(1) 10 cents per bushel for wheat,

(2) 7 cents per bushel for corn, grain sorghum, barley, and oats,

(3) For rice an appropriate amount that is fair and equitable in relation to wheat and feed grains, as determined by CCC.

(ii) The price support level determined for the crop. For wheat and feed grains, such level shall be that determined before any adjustments.

(c) For wheat and feed grains, whenever the Secretary announces a reduction in the price support level for a crop because of stocks to use condition or to maintain a competitive market position for such crop, the deficiency payment rate shall be increased by such amount as is determined necessary to provide the same total return to producers as if the loan and purchase level had not been reduced, taking into consideration payments made in accordance with paragraph (b) of this section. In such case, the amount of the deficiency payment rate, also known as emergency compensation payments, shall be the smaller of:

(1) The difference between the national average price support level for the crop before any adjustment by the Secretary and the national weighted average market price received by producers during the entire marketing year. For barley, prices received by producers of barley sold primarily for feed, or

(2) The difference between the national average price support level before any adjustment and the national average loan rate after reduction by the Secretary.

(d) Farm Program Payment Acreage. The individual farm program payment acreage for wheat, feed grains, upland cotton, and rice shall be the smaller of the maximum payment acres or the acreage planted to the crop on the farm for harvest within the permitted acreage of the crop for the farm. However, if the acreage of the crop planted for harvest is less than 92 percent of the maximum payment acres for the crop, the farm program acreage may be increased, but not to exceed 92 percent of the maximum payment acreage of the crop, minus the optional flex acres planted to other crops, as follows:

(1) For upland cotton or rice, the sum of:

(i) The acreage of the crop planted for harvest on the farm, and

(ii) The acreage credited to the crop in accordance with § 1413.50(a)(3), and

(iii) If a State or local agency has imposed in an area of the State or county or quarantine on the planting of cotton or rice for harvest, the Deputy Administrator, based upon a recommendation of the State committee, may allow the acreage subject to the quarantine to be considered as eligible for purposes of program payments in accordance with § 1413.50(a)(3).

(2) For wheat and feed grains the sum of the acreage of the crop planted for harvest and conserving uses credited to the crop in accordance with § 1413.50(a)(2).

(e) The farm program payment acreage for ELS cotton shall be the acreage planted to the crop for harvest within the permitted acreage of ELS cotton established for the farm.

§ 1413.109 Timing and calculation of deficiency payments.

(a)(1) Deficiency payments determined in accordance with § 1413.108(b) will be made to producers of barley, oats, and wheat, after December 1 of the year in which the crop is normally harvested.

(2) Deficiency payments determined in accordance with § 1413.108 (a) and (b) will be made to producers of upland cotton and rice after February 1 following the year in which the crop is normally harvested.

(3) Deficiency payments determined in accordance with § 1413.108(b) will be made for corn and grain sorghum after March 1 following the year in which the crop is normally harvested.

(4) Deficiency payments determined in accordance with § 1413.108(a) will be made to producers of ELS cotton after May 15 following the current year in which the crop is normally harvested.

(b) If applicable, the increased deficiency payments for feed grains and wheat calculated in accordance with § 1413.108(c) shall be made as soon as practicable after:

(1) July 1 following the year in which the crop is normally harvested for wheat, barley and oats; and

(2) October 1 following the year in which the crop is normally harvested for corn and grain sorghum.

(c) If, with respect to each of the 1991 through 1995 crops of wheat, feed grains, upland cotton, or rice, 90 percent of the 1985 farm program payment yield exceeds the farm program payment yield for the farm established in accordance with § 1413.6, deficiency payments for such crops for each year shall be determined by multiplying the farm program acreage by 90 percent of the 1985 farm program payment yield by the deficiency payment rate. Such payments shall be made at the same time as deficiency payments are made to the producer.

§ 1413.110 Malting barley.

(a) Except in counties where the State committee determines, with the concurrence of the Deputy

Administrator, that malting barley is not produced, an assessment for each of the 1991 through 1995 crop years will be levied on producers of malting barley who are participating in the price support and production program established for a crop of barley. The final deficiency payment for barley will be reduced by the amount of the assessment.

(b) The assessment per bushel will be the smaller of:

(1) 5 percent of the:

(i) State weighted average market price of malting barley produced on the farm, in those States where average market prices are available from the National Agricultural Statistics Service, or

(ii) The National average market price in all other States, or

(2) The final deficiency payment rate.

(c) The assessment will be calculated on the total production with respect to which deficiency payments are to be made unless: In the counties described in paragraph (a) of this section, all participating barley producers with planted acreage will be presumed to be producers of malting barley and subject to the assessment when final deficiency payments are computed. A producer who certifies on a form specified by the Deputy Administrator, and furnishes acceptable proof according to § 1413.6(d) that:

(1) All production failed or was used for feed purposes, will receive the full deficiency payment with no assessment.

(2) Part of the production failed or was used for feed purposes, and part of the production was sold for malting purposes, the assessment will be calculated on the production sold for malting purposes.

(d) If the producer does not certify to the use of the barley before receiving the final deficiency payment made based on the 5-month average market price and the assessment is deducted, a certification of the use of barley made in accordance with subsection (c) may be accepted by CCC by the later of:

(1) September 1 of the year following the year of production, or

(2) 30 days after redemption or forfeiture of barley under CCC loan.

(e) If the producer certifies and furnishes acceptable proof in accordance with paragraph (d) of this section, the payment shall be recalculated and a supplemental payment issued when applicable.

§ 1413.111 Division of payments.

(a) Each producer on a farm shall be given the opportunity to participate in the program for a crop in proportion to such producer's interest in the program crop on the farm or the interest such producer would have had if the crop had been produced. The name of all such producers shall be listed on the contract. Federal agencies can earn no program payments, but any shares to which such agencies would otherwise be entitled shall also be shown on the contract as though the agencies were earning them. The sum of the percentage shares of the program payment shall equal 100 percent.

(b) Each producer's share of the farm program payment for a crop shall be based on the following:

(1) For the 1991 crop year,

(i) If a rental agreement contains provisions for a guaranteed minimum rental with respect to the amount of rent to be paid to the landlord by a tenant, such agreement shall be considered to be a cash rental agreement. In addition, the rental agreement must be customary and reasonable for the area.

(ii) If a rental agreement contains provisions that require the payment of rent on the basis of the amount of the crop produced, or the proceeds derived from the crop, or the interest such producer would have had if the crop had been produced, such agreement shall be considered to be a share rental agreement. In addition, the rental agreement must be customary and reasonable for the area.

(2) For the 1992 and subsequent crop years:

(i) A lease will be considered a cash lease if it provides for a fixed commodity payment. A cash lease could be considered a share lease even though the tenant pays a cash advance as "good faith or earnest money", if the county committee determines that the amount paid in advance does not exceed one-half of the estimated value of the landlord's share of the crop. The rental agreement must be customary and reasonable for the area, as determined by the county committee.

(ii) If a rental agreement contains provisions that require the payment of rent on the basis of the amount of the crop produced, or the proceeds derived from the crop, or the interest such producer would have had if the crop had been produced, such agreement shall be considered to be a share rental agreement. In addition, the rental agreement must be customary and reasonable for the area.

(3) A different division of payment which is fair and equitable may be approved by the county committee if all of the producers who would otherwise share in the payment agree to the different division in writing and such division of payment would not circumvent the limitations provided in § 1413.1. Such different division of payments may also be approved by the county committee, with the concurrence of a representative of the State committee, even though all of the producers do not agree with respect to the division of payment. In addition, a different division of payments may be approved by the county committee when required by § 1413.151.

(4) For hybrid seed corn growers with a contract with a seed corn company, only those operations not unique to the production of hybrid seed corn will be considered when making determinations as to contributions by a seed company that would reduce the grower's share. Operations or inputs designated as unique to the production of hybrid seed corn shall include, but not be limited to:

(i) Providing seed;

(ii) Specialized harvesting;

(iii) Detasseling;

(iv) Roguing;

(v) Paying crop insurance premiums;

(vi) Providing special pesticides;

(vii) Specialized drying;

(viii) Application of special pesticides;

(ix) Pollination enhancement; and

(x) Split planting reimbursement.

§§ 1413.112–1413.129 [Reserved]

§ 1413.130 Eligibility for regular prevented planting and reduced yield payments.

(a) Prevented planting payments are authorized to be made to producers of wheat, feed grain, upland cotton, and rice only if such producers comply with the requirements of this part and if prevented planting crop insurance offered in accordance with the Federal Crop Insurance Act is not available with respect to the producer's acreage of such commodity.

(b) Reduced yield payments are authorized to be made to producers of wheat, feed grain, upland cotton, and rice only if such producers comply with the requirements of this part and reduced yield crop insurance offered in accordance with the Federal Crop Insurance Act is not available with respect to the producer's acreage of such commodity.

(c) Prevented planting payments and reduced yield payments are authorized to be made to producers of wheat, feed grains, upland cotton, and rice only if:

(1) Such a producer has entered into a contract with CCC for the applicable crop of the commodity on a farm;

(2) The operator and all producers have been determined to be in compliance with such contract; and

(3) The operator of the farm submits a Form ASCS–574, Application for Disaster Credit, in accordance with

instructions issued by the Deputy Administrator, and also submits a report of production and disposition in accordance with § 1413.6(d).

(d) In addition to the requirements of paragraph (c) of this section, the county committee must also determine that the operator and other producers were prevented from planting an eligible commodity or that the production of an eligible commodity on an acreage resulted in a reduced yield of such commodity because of a drought, flood, other natural disaster or other condition beyond the control of the operator or other producer.

(e) Prevented planting and failed acreage payments shall be computed in accordance with § 1413.131.

§ 1413.131 Regular disaster payment computations.

(a)(1) The prevented planting payment rate is one-third of the established (target) price as provided for in § 1413.104.

(2) The acreage eligible for payment equals the smallest of the following:

(i) The acreage of the crop intended for harvest, but which could not be planted to the crop or other nonconserving crops because of a drought, flood or other natural disaster of other condition beyond the producer's control;

(ii) The result obtained by subtracting the acreage of the crop planted in the current year from the acreage of the crop that was planted or prevented from being planted in the previous year;

(iii) For crops for which an acreage reduction requirement is in effect or on farms participating in a land diversion, the amount by which the permitted acreage of the crop for the current year exceeds the acreage of the crop planted in the current year; or

(iv) The acreage for which crop insurance under the Federal Crop Insurance Act is not available.

(3) Prevented planting payments for each crop shall be the result of multiplying the acreage eligible for payment times 75 percent of the farm payment yield as provided in § 1413.6 times the prevented planting payment rate.

(b)(1) The reduced yield payment rate is one-third of the established (target) price for upland cotton and rice and one-half of the established (target) price for barley, corn, grain sorghum, oats, and wheat as provided in § 1413.104.

(2) Reduced yield payments shall be determined for each crop by multiplying the reduced yield payment rate times the acreage of the crop on the farm for which crop insurance under the Federal Crop Insurance Act was not available by 60 percent (75 percent for upland cotton and rice) of the farm program payment yield as provided in § 1413.6, and subtracting the determined production for the eligible acreage therefrom.

(3) The production from any acreage shall be determined as follows:

(i) The production from acreage which is not harvested shall be appraised in accordance with instructions issued by the Deputy Administrator and shall be added to the actual production for the purpose of determining eligibility for and the amount of reduced yield prevented planted and failed acreage payments; and

(ii) The farm program payment yield shall be used with respect to any acreage for which the production cannot be determined. However, if the county committee determines that the acreage was affected by a natural disaster, the farm program payment yield with respect to such acreage shall be the larger of 60 percent (75 percent for upland cotton and rice) of the farm program payment yield as provided in § 1413.6 or the actual average yield from the harvested acreage of the crop.

§§ 1413.132–1413.149 [Reserved]

§ 1413.150 Provisions relating to tenants and sharecroppers.

(a) Program payments shall not be approved for the current year if it is determined that any of the conditions specified below exist:

(1) The landlord or operator has not given the tenants and sharecroppers on the farm an opportunity to participate in the program;

(2) The number of tenants and sharecroppers on the farm is reduced by the landlord or operator below the number on the farm in the year before the current year in anticipation of or because of participating in the program, except that this provision shall not apply to the following:

(i) A tenant or sharecropper who leaves the farm voluntarily or for some reason other than being forced off the farm by the landlord or operator in anticipation of or because of participating; or

(ii) A cash tenant, standing-rent tenant, or fixed-rent tenant unless:

(A) Such tenant was living on the farm in the year immediately preceding the current year, or

(B) At least 50 percent of such tenant's income was received from farming in the immediately preceding year;

(3) There exists between the operator or landlord and any tenant or sharecropper, any lease, contract, agreement, or understanding unfairly exacted or required by the operator or landlord which was entered into in anticipation of participating in the program the effect of which is:

(i) To cause the tenant or sharecropper to pay to the landlord or operator any payments earned by the person under the program,

(ii) To change the status of any tenant or sharecropper so as to deprive the person of any payments or other right which such person would otherwise have had under the program,

(iii) To reduce the size of the tenant's or sharecropper's producer unit, or

(iv) To increase the rent to be paid by the tenant or decrease the share of the crop or its proceeds to be received by the sharecropper;

(4) The landlord or operator has adopted any other scheme or device for the purpose of depriving any tenant or sharecropper of the payments to which such person would otherwise be entitled under the program. If any of such conditions occur or are discovered after payments have been made, all or any such part of the payments as the State committee may determine shall be refunded to CCC.

(b) Notwithstanding any other provision of this section, landlords or operators who in the past had tenants or sharecroppers on their land for purposes of producing the program crop and such individuals are not classified as employees subject to the minimum wage provisions under the Fair Labor Standards Act, may pay these individuals on a wage basis and will not be considered as reducing the number of tenants or sharecroppers.

§ 1413.151 Successors-in-interest.

(a) In the case of death, incompetency, or disappearance of any producer whose name appears on the contract, the payment due such producer shall be made to such producer's successor, as determined in accordance with the regulations found at part 707 of this title.

(b) When any person who had an interest as producer of the crop or would have had an interest in the crop as a producer if the crop had been planted (the "predecessor") is succeeded on the farm by another producer (the "successor") after a contract has been executed, any payment which is due and owing shall be divided between the predecessor and successor on such basis as the predecessor, successor, and the county committee agree is fair and equitable, the contract shall be revised accordingly, and the successor shall sign the revised contract. The successor shall assume responsibility for refunding any unearned payments issued to the

predecessor, if such refunds are required under the contract. If the predecessor and successor fail to agree on a revised contract and the predecessor has become unable to carry out the producer's responsibilities under the contract, CCC may terminate the contract with respect to the predecessor and enter into a new contract with the successor.

(c) In any case in which the amount of any payment due any successor producer has been paid previously to another producer, such payment shall not be paid to the successor unless it is recovered from the producer to whom it has been paid or payment to the successor is authorized by the Deputy Administrator.

(d) The total amount of payments that a successor may be entitled to receive under one or more of the annual programs established under the Agricultural Act of 1949, as amended, for wheat, feed grains, upland and ELS cotton, rice and oilseeds may not exceed $50,000 for deficiency and land diversion payments, and $75,000 for marketing loan gains (except honey), loan deficiency payments (except honey), and emergency compensation (increased deficiency) payments.

(e) CCC will not execute a contract with a successor when the successor would earn more payments than the predecessor would have earned under the original contract.

§ 1413.152 Misrepresentation and scheme or device.

(a) A producer who is determined by the county committee or the State committee to have erroneously represented any fact affecting a program determination shall not be entitled to payments under the crop program with respect to which the representation was made and shall refund to CCC all payments received by such producer with respect to such farm and such crop program and shall be liable for liquidated damages in accordance with the contract.

(b) A producer who is determined by the State committee, or the county committee with the approval of the State committee, to have knowingly:

(1) Adopted any scheme or device which tends to defeat the purpose of the program,

(2) Made any fraudulent representation, or

(3) Misrepresented any fact affecting a program determination shall refund to CCC all payments received by such producer with respect to all farms and shall be liable for liquidated damages in accordance with the contract. Such producer shall be ineligible to receive program payments for the year in which the scheme or device was adopted, and also in the succeeding year.

§ 1413.153 Offsets and assignments.

(a) *Producer indebtedness and claims.* Except as provided in paragraph (b) of this section, any payment or portion thereof due any person shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at part 1403 of this chapter shall be applicable to such payments.

(b) *Assignments.* Any producer entitled to any payment may assign any such payments which are made in cash in accordance with regulations governing assignment of payment found at part 1404 of this chapter.

§ 1413.154 Payments by commodities and commodity certificates and refunds.

(a) Payments under the programs authorized by this part may be made in the form of commodities or commodity certificates in accordance with part 1470 of this chapter.

(b) Whenever it is determined in accordance with § 1413.101 that a producer was overpaid or received payments that were not earned, and such payments were in the form of commodities or commodity certificates, the producer shall refund the amount of the overpayment either by returning commodity certificates in an amount equal to the overpayment or by making cash payments to CCC.

§ 1413.155 Appeals.

(a) A producer, an assignee of a cash payment, or a holder of a commodity certificate issued in accordance with § 1413.154 may obtain reconsideration and review of any determination made under this part in accordance with the appeal regulations found at part 780 of this title.

(b) With respect to farm program payment yields, determinations made before December 23, 1985 are not appealable.

§ 1413.156 Performance based upon advice or action of county or State Committee.

The provisions of part 791 of this title with respect to performance based upon action or advice of any authorized representative of the Secretary shall be applicable to this part.

§ 1413.157 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) for approved under the provisions of 44 U.S.C. chapter 35, and assigned OMB No. 0560–0004 and 0560–0092. OMB approval for the information collections contained in these rules expires May 31, 1991; however, a request for a 3 year extension from OMB will be submitted.

5. A part 1414 is added to read as follows:

PART 1414—INTEGRATED FARM MANAGEMENT PROGRAM OPTION

Sec.

Authority: 7 U.S.C. 5822

§ 1414.1 General description of the program.

The regulations in this part set forth the terms and conditions for the Integrated Farm Management Program Option (IFM). The objective of IFM is to assist producers of agricultural commodities in adopting integrated, multiyear, site-specific farm management plans by reducing farm program barriers to resource stewardship practices and systems.

§ 1414.2 Applicability.

The provisions of § 1413.1 of this chapter shall be applicable to this part.

§ 1414.3 Administration.

(a) The provisions of § 1413.2 of this chapter shall applicable to this part

except as otherwise provided in this section.

(b) The Soil Conservation Service shall provide technical assistance to the producer for planning and implementing the resource-conserving crop rotation, erosion control, water management, and water quality components of the plan, and shall provide such other technical assistance in the implementation of the IFM as determined necessary.

(c) The Extension Service (ES) shall coordinate the related information and education program concerning implementation of the IFM.

§ 1414.4 Definitions.

The terms defined in part 1413 of this chapter and part 719 of this title shall be applicable to this part except as otherwise provided in this section.

Alternative crops means experimental and industrial crops grown in arid and semiarid regions that conserve soil and water, as determined by ASCS and made available in county ASCS offices.

Conservation plan means the document containing the decisions of producers with respect to the location, land use, tillage systems and conservation treatment measures and schedule of implementation. The conservation plan also includes plans which have been established on highly erodible cropland in order to control erosion on such land.

ES means the Extension Service, an agency of the United States Department of Agriculture which is generally responsible for coordinating the information and educational programs of the Department.

Farming operations and practices includes the integration of crops and crop-plant variety selection, rotation practices, tillage systems, soil conserving and soil building practices, nutrient management strategies, biological control and integrated pest management strategies, livestock production and management systems, animal waste management systems, water and energy conservation measures, and health and safety considerations.

Grass means perennial grasses commonly used for haying or grazing.

Highly erodible land means land that has an erodibility index of 8 or more.

Integrated farm management plan (plan), means a comprehensive, multiyear, site-specific plan that meets the requirements of § 1414.7.

Legume means forage legumes (such as alfalfa or clover) or any legume grown for use as forage or green manure, but not including any bean crop from which the seeds are harvested.

Resource conserving crop means legumes, legume-grass mixtures, legume-small grain mixtures, legume-grass-small grain mixtures, and alternative crops.

Resource-conserving crop rotation means a crop rotation that includes at least one resource-conserving crop and that reduces erosion, maintains or improves soil fertility and tilth, interrupts pest cycles, or conserves water.

SCS means the Soil Conservation Service, an agency within the United States Department of Agriculture which is generally responsible for providing technical assistance in matters of soil and water conservation and for administering certain conservation programs of the Department.

Small grain shall not include malting barley or wheat, except for wheat interplanted with other small grain crops for nonhuman consumption.

Traditionally underplanted acreage means the difference between the producer's crop acreage base and the total of the acreage planted to the program crop, approved as prevented planted, and the part of the crop acreage base subject to an acreage limitation program or Acreage Conservation Reserve, except:

(1) In no case shall such acreage be less than zero, or

(2) In the case of a producer utilizing the 0/92 or 50/92 provisions set forth in § 1414.50 of this chapter, the term *"traditionally underplanted acreage"* means 8 percent of the producer's permitted acreage for such year.

§ 1414.5 Eligibility.

To be eligible to participate in the IFM, a producer must:

(a) Prepare an integrated farm management plan for approval by SCS;

(b) Actively apply the terms and conditions of the plan;

(c) Devote to a resource-conserving crop, on the average through the life of the contract, not less than 20 percent of all crop acreage bases on a farm enrolled under such program;

(d) Comply with the terms and conditions of any annual acreage limitation program in effect for all crop acreage bases on a farm contracted in the integrated farm management program option;

(e) Keep such records as ASCS may require; and

(f) Submit a report of acreage in accordance with part 718 of this title that list all crops and land uses which are subject to the contract for all cropland on the farm for the crop year.

§ 1414.6 Acreage enrollment.

(a) To the extent practicable, the total acreage enrolled in the program shall be no more than 3,000,000 to 5,000,000 acres of cropland during the years 1991 through 1995.

(b) Because of the limitation in paragraph (a) of this section, States will be given an allocation of acreage and National criteria will be used to rank applicants for enrollment in the program. Criteria will include the following:

(1) Acreage of highly erodible land in the proposed contract;

(2) Acreage of proposed resource-conserving crops in the proposed contract;

(3) Acreage of cropland in the proposed plan;

(4) Years in the proposed contract;

(5) Educational and demonstration value of the proposed contract; and

(6) Date of contract application.

§ 1414.7 Contracts.

(a) A producer shall enter into a contract with CCC for a period of not less than 3 years nor more than 5 years, which may be renewed upon mutual agreement between CCC and the producer.

(b) Signup. Eligible producers may offer to enter into a contract with CCC by executing a contract and submitting it to the county ASCS office where the records for the farm are maintained not later than a date specified in the announcement of the annual acreage reduction program.

(c) The contract shall provide that producers on the farm must agree to devote to a resource-conserving crop, on the average through the life of the contract, not less than 20 percent of all crop acreage bases on a farm enrolled under such program.

(d) The contract shall provide that producers on the farm shall comply with the terms and conditions of any annual acreage reduction program in effect for all crop acreage bases on a farm contracted in IFM.

(e) The contract shall contain such other provisions as CCC determines appropriate to carry out the program established by this part.

(f) The contract shall provide for payment of liquidated damages and termination in the event that the operator or any other producers on the farm fail to comply with their obligations under the contract.

§ 1414.8 Integrated farm management plan.

(a) In implementing the provisions of this part, ASCS shall:

(1) Provide the producer and SCS:
(i) Crop acreage base information; and
(ii) The minimum required resource-conserving crop acreage.
(2) Provide the producer:
(i) The annual acreage reduction program options relative to program planning decisions; and
(ii) Assistance in evaluating acreage reduction program options in conjunction with plan;
(3) Provide SCS a copy of the producer's report of acreage.
(4) Provide SCS a copy of the farm's acreage reduction program contract and IFM contract approved by COC.
(b) In implementing the provisions of this part, ES shall:
(1) Provide assistance to the producer, as requested, in developing integrated pest management guidelines if they are part of the plan.
(2) Provide assistance to the producer, as requested, in collecting and analyzing soil tests and in developing nutrient management guidelines if they are part of the plan.
(3) Provide assistance to the producer, as requested, with farm managment record keeping.
(4) Provide advice, for maximizing the utilization of IFM to their farm operation.
(c) In implementing the provisions of this part, SCS shall:
(1) Develop the plan with the assistance ofthe producer.
(2) Assemble the various components of the plan.
(3) Provide technical assistance to the producer for planning and implementing the conservation plan, erosion control, water management, and water quality components of the plan.
(4) Spot check the plans to assure that the elements contained in the plan have been implemented and meet technical standards.
(5) Assist the producer in revising the plan to address changes in farm operations.
(d) The plan will contain elements that address:
(1) The specific acreage and crop acreage bases enrolled;
(2) Acreage and location of the resource-conserving crop for each year of the contract.
(3) Scheduling practices for the implementation, improvement, and maintenance of the resource-conserving crop rotation.
(4) A description of the farming operations and practices to be implemented and the impact of those practices on:
(i) Maintenance or enhancement of the overall productivity and profitability of the farm.
(ii) Erosion, soil fertility, and soil physical properties.
(iii) Water supplies.
(iv) Federal, state, and local requirements designed to protect soil, wetlands, wildlife habitat, groundwater, and surface water.
(5) The coordination of all soil and water resource plans applicable to the enrolled acreage.
(6) Other provisions as determined by the Deputy Administrator.

§ 1414.9 Displacement of tenants or lessees.

(a) Contracts and plans that will result in the involuntary displacement of farm tenants or lessees by landowners through the removal of substantial portions of the farm from production of a commodity shall not be approved.
(b) In the case of any tenant or lessee who has rented or leased the farm (with or without a written option for annual renewal or periodic renewals) for a period of two or more of the immediately preceding years, the refusal by a landlord, without reasonable cause other than simply for the purpose of enrollment in the program, to renew such rental or lease shall be considered as an involuntary displacement in the absence of a written consent to such nonrenewal by the tenant or lessee.

§ 1414.10 Bases and yields.

Crop acreage bases or farm program payment yields shall not be reduced as a result of the planting of a resource conserving crop as part of a resource-conserving crop rotation implemented under the IFM.

§ 1414.11 Payments.

Farm program payments of participants in this program shall not be reduced as a result of the planting a resource-conserving crop as part of a resource-conserving crop rotation on payment acres.

§ 1414.12 Resource-conserving crops on ACR.

(a) Acreage devoted to resource-conserving crops as a part of a resource-conserving crop rotation under this program may also be designated as ACR for the purpose of fulfilling any provisions under any acreage limitation program.
(b) ACR acreage devoted to perennial cover on which cost-share assistance for the establishment of the perennial cover has been provided, shall not be credited towards the producer's resource-conserving crop requirement under a contract.
(c) 50 percent of the RCC acreage designated as ACR may be hayed and grazed anytime during the entire year.
(d) Barley, oats, or wheat as part of a resource-conserving crop, on ACR may not be harvested in kernel form.
(e) Other small grains that are part of a resource-conserving crop on ACR acreage may be harvested in kernel form.

§ 1414.13 Resource-conserving crops on payment acres.

Program payments with respect to acreage enrolled in the program shall not be paid to a producer if such producer hays or grazes such acreage (excluding acreage designated as ACR):
(a) During the 5-month period in which haying and grazing of conserving use acres is not allowed under the provisions of § 1413.64 of this chapter; or,
(b) If the crop planted on such acreage includes a small grain, before the producer harvests the small grain crop in kernel form.

§ 1414.14 Payment acreage limitation.

(a) Producers enrolled in a resource-conserving crop rotation shall not be eligible to receive payment under such program on acreage equal to the average number of traditionally underplanted acres for the three years prior to enrolling in this program.
(b) For purposes of determining three years prior to enrolling in the program for "all in, all out rotation bases," the three previous crop years with crop acreage bases greater than zero shall be used.

§ 1414.15 Compliance with part 12 of this title, highly erodible land and wetland conservation provisions.

The regulations set forth in part 12 of this title are applicable to this part.

§ 1414.16 Successors-in-interest.

(a) The established successor-in-interest provisions of § 1413.151 of this chapter are applicable to this part, except as otherwise provided in this section.
(b) Successors not wanting to continue participation in IFM may terminate the IFM contract, without liquidated damages, after the current year.

§ 1414.17 Reconstitution of farms.

The reconstitution regulations set forth in part 719 of this title are applicable to this part.

§ 1414.18 Misrepresentation and scheme or device.

The misrepresentation and scheme and device regulations set forth in § 1413.152 of this chapter are applicable to this part.

§ 1414.19 Offsets and assignments.

The offset and assignment regulations set forth in parts 1403 and 1404 of this chapter are applicable to this part.

§ 1414.20 Appeals.

The appeal regulations set forth in part 780 of this title are applicable to this part.

§ 1414.21 Performance based upon advice or action of county or State Committee.

The provisions of part 791 of this title with respect to performance based upon action or advice of any authorized representative of the Secretary shall be applicable to this part.

§ 1414.22 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and an OMB control number will be assigned.

Signed at Washington, DC, on April 12, 1991.

Keith Bjerke,

Administrator, Agricultural Stabilization and Conservation Service, Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91-9049 Filed 4-16-91; 11:01 am]

BILLING CODE 3410-05-M

Federal Register

Friday
April 19, 1991

Part III

Department of Housing and Urban Development

Office of Assistant Secretary

24 CFR Part 221

Mortgage Insurance for Single Room Occupancy Projects; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 221

[Docket No. R-91-1488; FR-2774 F-03]

RIN 2502-AE95

Mortgage Insurance for Single Room Occupancy Projects

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule establishes a new mortgage insurance program for the new construction and substantial rehabilitation of single room occupancy facilities (SROs). The program is designed to expand affordable housing opportunities for single persons and to help prevent homelessness. It will enhance the provision of much needed housing for persons now living in substandard or overcrowded conditions, or at risk of becoming homeless.

Multifamily mortgage insurance would be made available under section 221(d) of the National Housing Act, 12 U.S.C. 17151(d), pursuant to the authority in section 223(g) of the National Housing Act, 12 U.S.C. 1715n(g).

EFFECTIVE DATE: June 1, 1991. If it is necessary to delay this effective date, HUD will publish a document in the **Federal Register** prior to June 1, 1991 doing so.

FOR FURTHER INFORMATION CONTACT: Linda Cheatham, Acting Director, Office of Insured Multifamily Housing Development, room 6134, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, voice: (202) 708-3000. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

A. Background

In many localities, there exists a fairly sizable population of persons, consisting of low-income wage earners and others who derive their income from some form of public assistance, who cannot afford market area rents for apartments that typically consist of more than one room. Many in this population, consisting largely of single persons, are in jeopardy of joining the ranks of the homeless, while others pay a disproportionately large portion of their incomes to reside in substandard housing units.

The Department believes that an unassisted single room occupancy (SRO) multifamily insurance program could significantly assist this population, the members of which are generally not served by HUD's other insurance or rent subsidy programs.

SRO projects have recently become recognized by local governments and by advocacy groups for the homeless and affordable housing as a means of helping to alleviate housing ills that beset many urban centers. Efforts are currently underway in such cities as New York, Los Angeles, San Diego, San Francisco, Atlanta, Richmond and the District of Columbia. These efforts to develop and convert SROs to long-term affordable housing projects show significant promise. New development or substantial rehabilitation of SROs, at times used in conjunction with local government financial assistance or federal tax credits, has resulted in an increasing number of affordable units being made available to low-income persons. Nonetheless, an inadequate supply of SRO units continues to exist. Persons who could obtain low-wage employment in urban centers are often unable to find affordable, decent housing in proximity to the jobs that are available. In the absence of an adequate supply of SRO units, some are required to choose between employment and decent housing. In order to expand the supply of SRO units, and thereby assist in meeting the needs of some of those who are ill-housed or in need of housing in proximity to employment, HUD is establishing this new multifamily mortgage insurance program. Federal mortgage insurance will have the effect of increasing the financial viability of investment in this form of affordable housing.

In reviewing the SRO issue, HUD has focused a good deal of attention on the program undertaken in the city of San Diego. San Diego is working with private developers to generate what ultimately will approximate 2500 new SRO units. Developers have benefited from city financial support, assistance from local housing authorities and federal tax credits. In order to accommodate the new program, San Diego has had to enact a number of changes to building and zoning codes and requirements.

HUD has determined that a local government, as opposed to the federal government, is best situated to assess how, within the local jurisdiction, an SRO program can best serve the interests of those who are living in substandard housing. Different jurisdictions will arrive at different decisions in relation to such matters as what income groups need most to be served within the community. Local codes will vary among jurisdictions in relation to such matters as permissible room sizes. Because HUD recognizes that local conditions may well vary, it has designed the rule to provide local governments with an opportunity to take an active role in the implementation of the SRO program.

This rule includes a requirement for the submission of a certification by the local government with each application, indicating that the local government has reviewed the project, found that there is a need for the project, and will ensure its best efforts to provide municipal and support services required for long-term success of the project. This consultation procedure will involve local government in the SRO process, as well as provide HUD with important information on housing needs. Moreover, many cities have a vested interest in SRO projects which provide affordable housing for service workers convenient to job opportunities. Also, the certification process will alert local governments to the special service requirements of specific SRO's for their long-term viability. As noted above, many cities are already taking steps to address the needs of the population served by SROs and have expressed interest in providing such assistance as tax abatement, land write-downs, and tax-exempt financing for these projects.

When a SRO project is underwritten for FHA mortgage insurance, it will not be eligible for any kind of project-based Section 8 assistance. The Department expects that project financial feasibility in many areas will depend upon some type of assistance from State and local governments. This assistance may be in the nature of tax abatement, tax-exempt financing, tax credits or secondary financing, or other forms.

B. Public Comment on Proposed Rule

On August 27, 1990 the Department published a proposed rule to establish a mortgage insurance program for Single Room Occupancy Projects (55 FR 34988). A total of 31 written comments concerning this proposed rule were received. Commenters included private organizations (for profit and nonprofit) having an interest in SROs or the multifamily mortgage market generally, trade associations, local public agencies and private individuals. What follows is a description of the major issues raised by these commenters and HUD's responses to them. Wherever feasible, the description of each issue is provided by directly quoting one or more of these commenters.

1. More Stringent Loan to Replacement Cost Limitation

In the Preamble to the proposed rule (55 FR 34989), the Department had given notice that it was considering a more stringent loan to replacement cost limitation (80 rather than 90 percent) for the program. Fifteen commenters addressed this issue. Typical of the comments received is the following.

We do not see any logical basis for a more stringent loan to replacement cost limitation for SRO housing (*i.e.*, 80 percent rather than the 90 percent permitted under Section 221(d)). If SRO housing is to be targeted to limited income individuals, thereby generating limited cash flow, the burden of raising equity must be reduced. Section 221(d) recognized this fact by allowing 90 percent mortgages. With proper underwriting and adequate review, SRO mortgages should be no more risky than other projects. The loan to replacement cost limitation should not be reduced for SRO properties.

HUD Response: The Department considered a more stringent loan to replacement cost limitation for SRO projects insured under section 221 because of the unique physical characteristics of SRO housing (compared to full-size rental apartment units) and the possibility that unsubsidized housing designed to serve low-income individuals could pose a greater insurance risk to the Department. We have, however, decided not to prescribe such lower replacement cost limitations for SRO housing in this final rule. Further analysis has led us to conclude that SRO projects, properly underwritten, will not pose an undue insurance risk to the Department. In most cases, an insured loan for a SRO project will be limited by the income factor (debt service criterion) used to calculate the maximum insurable loan amount rather than by the replacement cost criterion. (HUD processing requires that the insured loan amount be the lowest of several applicable criteria. Typically, in multifamily processing, it is the debt service criterion that controls the mortgage amount to be insured). HUD anticipates that the level of income available to support project debt will result in loan to replacement cost ratios at or below the 80 percent level unless some type of development cost write-down or operating cost subsidy is provided.

The economics of SRO housing, especially the income factor, constrain the loan to replacement cost ratio of SRO project financing and, as noted in the comments received on the proposed rule, local governments have typically provided the additional financial support needed for project viability. In light of these factors, we do not feel that SRO projects insured under the current section 221 loan to replacement cost limitations will represent an unreasonable insurance risk. Therefore, the final rule will not impose a more restrictive loan to replacement cost limitation. However, it should be noted that the Department will thoroughly evaluate the SRO program no later than after two years of operation or 200 million dollars of insurance has been underwritten (whichever occurs first). The Office of Housing, in conjunction with HUD Field Offices having insured SRO projects under development or in management, will assess these SRO projects with respect to various program aspects. These include but are not limited to tenant composition, previous residency and income levels; project rents, costs, and expenses and physical condition; local or State financing assistance, if any, and financial status of projects; and any other areas of project development of management the Department deems necessary. If, at that time, the program proves economically unsound under the provisions of this final rule, the Department either will revise the program to remedy any underwriting deficiencies identified through its analysis, or will terminate the program altogether.

2. Local Government (Financial) Participation

A second issue raised in the proposed rule was whether, and to what extent, local governments should be required, in the regulation, to assume some financial responsibility for the mortgage or otherwise provide financial assistance. Nineteen commenters addressed this issue. Typical were the views expressed by a national homebuilding association.

We are concerned that tying eligibility exclusively to availability of local government subsidies and guarantees will restrict the effectiveness of the program. While local government assistance such as tax abatement, land write-downs and tax exempt financing should be encouraged, it should not be a required condition. Further, the proposal to require local governments to assume co-responsibility for the financial obligation of the mortgage will virtually assure that few units are built under the program. A number of the local governments with the greatest need for SRO housing as a transitional housing resource are so financially strapped that they are in no position to assume co-responsibility for SRO mortgages. This requirement would not permit significant use of this program in some communities and totally preclude its use in others.

It would be worthwhile for HUD to keep in mind that a number of the most successful SRO's currently in operation were financed using the low income housing tax credit or flexible subsidies such as CDBG second mortgages. Other market-rate SROs were built without subsidies. The hurdle to SRO development has been lack of debt financing because SROs are viewed as a hybrid product and because mortgages for any type of multifamily project are difficult to obtain in the current financial environment. HUD mortgage insurance can effectively address this problem under the current 221(d) requirements, without adding cumbersome requirements for local government mortgage guarantees and subsidies.

HUD Response: The proposed rule emphasized the importance (if not necessity) of financial support for SRO developments by local governments. The Department considered whether or not to require some form of local government financial responsibility for SROs, but determined that such a requirement would serve no practical purpose. As discussed above in responding to issue (1), the economics of SRO projects will dictate the need for additional resources, whether from local governments or other sources. Consequently, there is not a need to expressly impose such a requirement.

This final rule does, however, contain a requirement that the initial application for mortgage insurance include a certification by the general unit of local government in which the project will be located that (1) it is familiar with the project proposal, (2) a documented need exists within the community for the project, (3) it will ensure its best efforts to provide the municipal and support services required for the long-term success of the project, and (4) in cases involving displacement or relocation of existing tenants that the sponsor/developer has prepared a relocation plan acceptable to the local government. This plan must identify alternative affordable housing and indicate that adequate financial resources are available to carry out the plan. Relocation or displacement under the mortgage insurance programs is not subject to the requirements of the Uniform Relocation Act. The local government is under no obligation to provide funds for relocation costs, although it may elect to do so if it wishes to provide such funds for SRO projects.

3. Project-Based Rental Assistance

The Preamble to the proposed rule also stated the Department's intention not to provide project-based rental assistance under the insured SRO program. Four commenters addressed this issue. Typical of the comments received is the following:

Project-based rental assistance could be a valuable mechanism to allow SRO housing to provide a number of transitional housing

units within a project for persons who were homeless or are at-risk of homelessness. The program could be structured so that when the situation of such individuals stabilizes and they are able to assume full responsibility for the rent on an SRO unit, the project-based assistance could be made available for another individual requiring a transitional period. If SRO housing is intended to prevent homelessness, it appears unnecessarily limiting to prohibit the units in a property from receiving project-based assistance.

HUD Response: The Department's objective in initiating the HUD-insured SRO program is not to duplicate programs already in existence (e.g., the Special Needs Assistance (Homeless) program or the section 8 Moderate Rehabilitation SRO program) but rather to facilitate the development of affordable, unsubsidized housing for low-income persons who, while not homeless, reside in substandard housing and who, absent access to SRO units, may be in jeopardy of being homeless. The provision of project-based rental assistance could be a disincentive for local governments to provide financial assistance to meet this objective.

4. Fair Housing Accessibility Guidelines

The Preamble to the proposed rule also invited comments that considered the impact of proposed accessibility guidelines (55 FR 3232) published by the Department to implement the Fair Housing Amendments Act of 1988, which amends title VIII of the Civil Rights Act of 1968, on the cost of SRO construction, and upon rents in SRO facilities. Five commenters addressed this issue. Typical of the comments received is the following:

With respect to the impact of the proposed fair housing accessibility guidelines on the cost of SRO construction and upon rents in SRO facilities, NAHB, along with a coalition of disability and other industry groups, analyzed the potential economic impact of the proposed guidelines and concluded that these guidelines will substantially increase development costs for every new multifamily project, including development costs for SRO projects. (See Comments on Preliminary Regulatory Impact Analysis, October 9, 1990, Docket No. N-90-2011: FR 2665-N-05). These additional development costs will be directly reflected in rent increases for new SRO projects. Given that SRO units are targeted for a low-income segment of the population that is least able to afford even incremental rent increases, fewer SRO units may be built because of the additional costs resulting from the new fair housing requirements.

HUD Response: The impact of the Accessibility Guidelines on the costs of developing multifamily housing projects was, among other issues, the subject of a separate review conducted by the Department. See 56 FR 9472, March 6, 1991, Final Fair Housing Accessibility Guidelines. These Guidelines apply to new construction of all multifamily housing with four or more units. They provide technical guidance on compliance with specific requirements regarding certain accessible features and accommodations in newly constructed multifamily housing available for first occupancy after March 13, 1991. SRO housing is a type of multifamily housing that is subject to the Fair Housing Act and the Guidelines. No legally sufficient basis exists for excluding SRO projects from the Accessibility Guidelines. Under the Fair Housing Amendments Act of 1988, however, covered multifamily dwellings for first occupancy do not include rehabilitated, altered, or repaired units. Thus, to the extent that SRO units are not newly constructed units for first occupancy, they would be exempt from the coverage of the accessibility guidelines.

5. Program Termination Provision

One commenter, the National Association of Homebuilders, discussed this provision in the proposed rule, stating:

Any program termination should not go into effect for 180 days from publication of the termination notice. This would permit sponsors of pipeline projects, for which substantial expenditures have been incurred, to complete processing and receive insurance from this program.

HUD Response: We agree that the Department should consider the impact of program termination on projects in the processing pipeline in any decision to invoke the termination provision of § 221.565(f) of the proposed rule. When implementing major procedural or program changes, HUD's policy is to honor outstanding conditional and firm commitments issued before the effective date of such changes.

6. Elimination of Central Dining Facilities

One commenter urged that dining facilities and mandatory meals be allowed in the regulation.

I currently serve 2 meals a day, breakfast and dinner which are mandatory for my tenants. I can offer 2 meals a day on an economical basis as I own and operate a restaurant chain and have an extensive food service background and can purchase, prepare and serve food on a cost effective basis. My food service background thus enhances the price value experience my tenants enjoy. Therefore I strongly believe you should make exceptions on this proposal subject to the food service background of the operators. (Private Hotel Owner).

HUD Response: The Department's experience with HUD-insured projects for the elderly that offer meals programs (especially projects developed under the Retirement Service Center procedures recently proposed for termination) has not been favorable. The financial difficulties experienced by many of these projects can be attributed, to some degree, to congregate or mandatory meals programs that do not pay for themselves.

The costs of construction, equipment, personnel, etc., involved in providing food services in a project have a significant impact on the rents charged to residents. Quite often, congregate meals programs do not generate enough income to cover the costs of providing food services. Many projects with mandatory meals programs have been forced to switch to an optional basis to attract new residents (or maintain occupancy levels) because residents were unwilling or financially unable to pay for food services provided by the project. This is especially true where other, reasonably priced food services (restaurants, cafeterias, community meals programs) are readily available.

The Department's primary reason for undertaking the SRO program initiative is to expand the availability of affordable housing. The cost of including central kitchen and dining facilities in an SRO project, in our view, would defeat this objective. Therefore, the final rule provides, in § 221.265(e) of this rule that "A SRO project may not include central or shared kitchen or dining facilities for providing food services to tenants." This change from the policy set forth in the proposed rule of allowing project owners to require one meal per day as a condition of occupancy in cases where congregate meals are provided is necessitated for the reasons cited above. It should be noted, however, that § 221.565(a) of this final rule expressly allows individual units to include food preparation facilities such as a microwave oven.

7. Mortgage Allowance for Unit Furnishings

Three commenters raised this issue. Typical of the comments received is the following:

SRO units are typically designed to meet the needs of persons who do not possess their own furnishings at the time they move into the facility. If HUD's intent is to use successful existing SRO's as a model for the mortgage insurance program, a mortgage allowance for basic unit furnishings such as a bed, desk, chair, storage unit, microwave and small refrigerator should be permitted. Replacement reserve requirements can reflect these items. These items are an integral part of SRO housing and the needs of the population such housing is intended to serve.

SRO housing is not simply a smaller version of an efficiency or studio apartment, it is special needs housing.

HUD Response: As stated in the proposed rule, HUD does not want to include in the mortgage amount the cost of items that are easily removed from the project and that typically have a short economic life span, including furnishings in individual living units. The final rule does permit inclusion of costs related to items in common areas that are employed for the benefit of the entire project and that typically have long economic life spans such as lobby furniture. Typically, in SRO housing, project owners do provide basic appliances and furnishings in order to market units regardless of the type of financing.

8. Targeting of Resident Population

Eighteen commenters raised this issue. All but one favored at least some degree of targeting. Typical of the comments received are the following.

We believe that HUD should be willing to insure SRO projects which propose support services for targeted market provided that the design of the facility would allow the facility to be converted to general market use if the targeted market does not develop as projected. We believe that targeting occurs primarily through the services which are provided in association with the development, not by the design of the development. An exception might be a development in which all units are designed for accessibility by persons with physical disabilities. However, persons without disabilities can always occupy accessible units. (State Residential Finance Authority).

The "targeting" issue in the regulations is confusing. All housing projects are targeted and/or marketed to specific groups and designed/managed accordingly. It may not be good judgement to make a project 100% elderly—or 100% anything—but it's real good judgement to target your population to reflect a mix of occupants and clarify that mix. For example, the best SRO's in San Diego are about ⅓ elderly, ⅓ working poor and ⅓ fixed income/disabled. We targeted this population but never set quotas for their occupancy. There's nothing wrong with targets—perhaps it's *quotas* that are the problem. In any event, my advice is don't build a project with 100% of any age group, physical or mental disability. But target who you want to serve and then serve them well!

HUD Response: The primary purpose of the SRO program is to expand the supply of affordable housing for low-income people in general—not just specific categories of low-income people. We recognize that potential sponsors of SRO housing are often concerned with specific population groups within the low-income population and that these sponsors provide a variety of support services to their constituent groups in addition to affordable SRO housing. However, the basic purpose of this program is more inclusive. Therefore, a provision in the proposed rule prohibiting such preferences or restrictions is retained in this final rule.

9. Clarify Insurance Status of Other Assistance Provided Project

One commenter raised this issue stating:

The rule should state specifically that HUD insurance cannot be obtained to cover any non-mortgage investment in the project, such as donations. Also, HUD should specify whether or not mortgages provided by public agencies, such as CDBG loans or housing trust fund loans, can be insured. Our interpretation is that the insurance is to be used for loans received from private sector lending institutions. Perhaps some additional clarity is needed on this issue as many SRO sponsors are somewhat unsophisticated about the wide variety of financing activities. (State Residential Finance Authority).

HUD Response: SRO projects are processed under the same general mortgage insurance procedures as other applications for section 221 multifamily mortgage insurance. Section 221 of the National Housing Act does not give HUD authority to insure secondary project loans that are made by public agencies using either housing trust funds or Community Development Block Grant allocations. The Department is limited to the insurance of first mortgage loans by approved lenders.

10. Thirty Day Lease Requirement

The proposed rule contains a requirement that tenants must execute a lease having a duration of at least 30 days. Eight commenters addressed this issue. Two endorsed the proposal noting that at least it was not a one year requirement. The remaining four had strong reservations concerning this requirement, because of concerns over a tenant's ability to meet monthly rental amounts, and because landlords may be wary of admitting certain tenants if occupancy is subject to eviction laws that entail costly and time-consuming procedures.

HUD Response: The Department's multifamily mortgage insurance programs are designed to facilitate the development of permanent housing, not housing for transient or hotel purposes. A minimum 30-day lease is required under section 513 of the National Housing Act for use in HUD-insured multifamily housing projects. The Department recognizes that there may be unique difficulties associated with the clientele to be served by SRO projects, and that owners of these projects may need a degree of flexibility in their application procedures (e.g., tighter screening, flexible security deposit and rent collection schedules) to maintain a stable, permanent rental housing environment. Although a lease of 30 days duration is required, rent collections can be on a less frequent basis, *i.e.*, weekly. Also, an owner is not required to insist upon a security deposit even if the lease makes provisions for it.

A SRO project is permanent residential housing, but in some respects it is clearly distinguishable from a typical multifamily project. Some prospective tenants may not have a sufficient track-record of previous tenancy, so that even excellent tenant screening is not necessarily fool-proof. Under these circumstances, an owner may be reluctant to rent units to prospective tenants who lack an adequate past record of long-term tenancy. In such an instance, persons who would not be problematic, and who are the persons this program is designed to serve, might be denied access to SRO projects. Nonetheless, the literal language of section 513(a), applicable to multifamily housing with insured financing pursuant to section 221(d)(4), requires the use of a lease having a minimum 30-day duration.

11. Applicability of SRO Program to Rural Areas

One commenter had the following comment on this question.

I have been involved with developing housing in New Hampshire where the scale is much smaller. I am concerned about the applicability of this program to rural areas. Nonprofit groups working in smaller communities need to be able to use this program for projects that may be as small as six or eight units. In some areas scattered sites make more sense both for the residents and for the community. I would ask that the regulations and the distribution of the Mortgage Insurance Program be flexible so as to include the need of the rural areas.

HUD Response: The eligibility requirement of the multifamily mortgage insurance programs require that a project consist of five (5) or more units. Proposals involving noncontiguous (scattered) sites are acceptable provided the building sites are in the same immediate area; the sites can be managed effectively; and the project as a whole meets all financial and programmatic standards for approval.

12. Long-term Affordability Restriction

Four commenters urged that provision be made to ensure the continued low and moderate use of SRO properties.

It is imperative that some method of retaining long-term affordability be used with

this program. It is HUD's intent to house some of the most vulnerable members of our society through this program. Without a means to retain the affordability, the owners will be able to convert their projects as they are now able to do with Section 236 and Section 221(d)(3), only in this case the residents of the SRO's will be even poorer and have greater problems. HUD should not let this situation recur. Stronger methods of affordability retention should be used and there should be a priority for nonprofit owners. (Private Nonprofit Corporation).

Given that the target population to be served by this program includes those who are homeless, at-risk of becoming homeless or otherwise financially vulnerable, we urge HUD to strengthen the mortgage prepayment regulations at 24 CFR 221.524, and 24 CFR Part 248 to protect tenants and preserve the long-term affordability of SRO units insured under this program. We cannot afford to allow SRO's insured under the 221(d)(3) program to become the "expiring-use" problem of the future * * *. (Local Government Agency)

HUD Response: Loans insured under the SRO program would be insured under section 221(d)(4) of the National Housing Act, and therefore would not be subject to existing statutory or regulatory prepayment restrictions designed to preserve low- and moderate-income use. However, HUD agrees that since the SRO program is intended to provide a long-term solution to problems related to the lack of affordable housing, it would be appropriate to restrict the use SRO projects for an extended period of time. Accordingly, the final rule provides that the owner must execute a use agreement at the time of loan origination restricting the project's use as a SRO project for a period of twenty years from the date of final endorsement. The Secretary would reserve the right to terminate the use restriction at an earlier date for good cause. The use restriction would not have priority over the HUD-insured SRO mortgage.

13. Refinancing

Two commenters urged that "the program should allow for refinancing."

HUD Response: The Department's primary purpose in initiating the section 221 mortgage insurance program for SRO development is to expand the supply of SRO units rather than to provide refinancing in the manner of the section 223(f) program. This purpose is stated clearly in the proposed rule for SROs. Therefore, SRO applications involving existing properties are eligible under the section 221 program only if the repair program included in the application for substantial rehabilitation meets one of the following criteria:

a. The cost of the repairs, replacements, and improvements in the application for substantial rehabilitation must exceed 15 percent of the property's value after completion of all repairs, replacements and improvements; or

b. The repair program must involve the replacement of at least two major building components. The term "major building component" includes roof structures; ceiling, wall, or floor structures; foundations; and plumbing, heating, air conditioning or electrical systems.

The final rule is revised to set forth these eligibility criteria for substantial rehabilitation.

14. Financing SRO's Undergoing Seismic Retrofit

A San Francisco Development agency had the following comment.

Another type of lending that we would specifically want to have eligible for the mortgage insurance program would be for acquisition and rehabilitation loans for SROs undergoing seismic retrofit. Many SROs in San Francisco as well as in the entire Bay Area are unreinforced masonry buildings (UMBs). Retrofitting and preserving this housing stock is a major goal of our city's affordable housing development strategy.

HUD Response: Projects undergoing (or needing) seismic retrofit would be eligible as substantial rehabilitation applications under the section 221 SRO program provided the repair program included in the application met criteria for substantial rehabilitation for SRO projects described above.

15. Timing of Local Government Certification

A private nonprofit corporation had the following comment.

Your deference to local government concurrence and support of such projects is important and necessary; however, the local government role should be more carefully fashioned so as not to inhibit project feasibility or timely production of this crucially needed SRO housing. Local government certification that it has reviewed the project, found it to fill a need and will exercise its "best efforts" to supply municipal and support services is necessary for the success of a project. Such certification should not be required, however, prior to application submission but rather as a condition of closing. The approval process could be greatly expedited if, after initial approval by HUD, the local government review and certification process proceeded *in tandem* with the HUD review and final approval; local government certification being necessary by closing.

HUD Response: We do not concur with the recommendation that the certification of support from the local government be deferred until later in project development (*i.e.*, in tandem with HUD approval) rather than at the time the initial application is submitted. More often than not, the feasibility of an SRO project depends on local governing body support. Given the critical role played by the local government, the extent of its support for a proposed project must be known as early as possible in the development of the project. Therefore, the requirement for a certification of support and description of financial resources committed to an SRO proposal by the local governing body must be submitted with the initial application for mortgage insurance.

16. Definition of SRO

A private SRO housing developer based in Chicago had the following comment.

Finally, if the insurance program is developed, we recommend changing the definition of an SRO project to allow for buildings with some, but a distinct minority of, one-bedroom units. Of our three projects to date, one building has four one-bedroom units out of seventy units total; the other has one-bedroom out of 86 total units. The common corridors and shared baths in these buildings clearly mark them as SROs, yet neither would be qualified under the proposed definition. It is not uncommon to find such a mixture, with at least one one-bedroom unit reserved for an on-site manager. We urge that the definition be extended to allow this type of unit mixture.

HUD Response: We agree that the SRO procedures should allow the inclusion of a unit or units comprised of more than one room for use by project staff members (*e.g.*, resident managers). However, allowing projects to involve a mix of one-room units and multi-room apartments could change the nature of, and thus undermine the purpose of, an SRO project as envisioned under the HUD-insured mortgage program. Accordingly, the final rule will only permit deviation from the single-unit design for the purpose of (a) housing project management, and (b) in cases of substantial rehabilitation, where the costs involved in converting larger units to single rooms would be prohibitive; *Provided, That* no more than five percent of the project units (excluding units for management) consist of more than a single room.

C. Miscellaneous

Section 221 permits cooperative (and investor sponsor) mortgagors as well as nonprofit, limited distribution, public body and general mortgagors. The Department did not intend for SRO housing to be developed as cooperative housing; therefore, a provision has been added to the final rule excluding cooperative and investor sponsor

mortgagors from the section 221 SRO program.

In § 221.565(i)(2) of the rule the term of limitation "at least two" is used. We believe that is preferable to the term "one or more" used elsewhere in HUD regulations in describing what is required for substantial rehabilitation since it precludes any possible interpretation that "one or more" could include one and a fraction. Such an interpretation of the term "one or more" is not now, and never was, intended by the Department.

Other Matters

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies proposed in this proposed rule would not have Federalism implications when implemented and, thus, are not subject to review under the Order.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, has determined that this rule would not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order.

A Finding of No Significant Impact with regard to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street SW., Washington, DC 20410.

This rule would not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation. Analysis of the rule indicates that it would not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(3) Have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would enable HUD-approved mortgagees to issue insured mortgages related to single-room occupancy facilities.

This rule was listed as sequence number 1190 in the Department's Semiannual Agenda of Regulations published on October 29, 1990 (55 FR 44530, 44547), under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.135.

List of Subjects in 24 CFR Part 221

Low and moderate income housing, Mortgage insurance, Reporting and record-keeping requirements.

Accordingly, 24 CFR part 221 is amended as follows:

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

1. The authority citation for 24 CFR part 221 continues to read as follows:

Authority: Secs. 211 and 221, National Housing Act, 12 U.S.C. 17151; 221.544(a)(3) is also issued under sec. 201(a) of the National Housing Act, 12 U.S.C. 1707(a).

2. A new § 221.565 is added, under a new undesignated center heading, to read as follows:

Single Room Occupancy

§ 221.565 Eligibility of mortgages covering single room occupancy facilities.

Notwithstanding the generally applicable requirement that mortgages insured under this subpart be limited to projects providing housing for low and moderate income families and displaced families, a mortgage financing the new construction or substantial rehabilitation of a single room occupancy project (SRO) shall be eligible for insurance under this subpart, pursuant to section 223(g) of the Act, subject to compliance with the additional requirements of this section. The SRO mortgage insurance program shall be a full insurance program only.

(a) *Definition of a single room occupancy project.* A SRO project is a multifamily project comprised (except as provided in paragraph (e) of this section) of one room units. A unit must be the primary residence of the occupant(s). A unit may contain food preparation and sanitary facilities. Alternatively, sanitary facilities may be located outside the units and shared by tenants in the project. The provision of services made available to tenants can vary among SROs, consistent with the provisions of this section, but in no event shall a facility requiring a state license to operate a board and care home be eligible for mortgage insurance under this part. Additionally, facilities restricting occupancy to particular groups, such as students, shall not be eligible for mortgage insurance under this part.

(b) *Maximum mortgage amounts.* The mortgage shall involve a principal obligation that is not in excess of the limitations prescribed in § 221.514, except that the replacement cost may include an estimate for the cost of certain furnishings, such as lobby furniture, approved by the Commissioner for use in common areas. The cost of furnishings in individual units are not eligible for inclusion in the replacement cost.

(c) *Local Government Certification.* The initial application for mortgage insurance shall include a certification by the general unit of local government in which the project will be located that (1) it is familiar with the application; (2) a documented need exists within the community for the project; (3) it will provide municipal and support services required for the long-term success of the project; and (4) in cases involving displacement or relocation of existing tenants, the sponsor/developer has prepared a relocation plan acceptable to the local government. This plan must identify alternative affordable housing and ensure that adequate financial resources are available to carry out that plan.

(d) *Lease and rent requirements.* The tenant must execute a lease having a duration of at least 30 days. However, the lease may provide for rent to be collected on a weekly basis.

(e) *Occupancy and unit size requirements*—(1) *Number of persons.* Each unit may be occupied by one or more persons capable of meeting the terms of the lease agreement. The number of persons that may occupy a unit shall be governed by local codes and ordinances, that take into consideration the size of the unit. In the absence of a local code governing the minimum space per person requirement, the SRO project owner will establish the minimum unit size, subject to the Commissioner's approval. Where a SRO unit is occupied by more than one person including a child, local government may establish limitations on relationships of the occupants, consistent with the Fair Housing Act.

(2) *Size of Unit.* Units larger than one room may be included in a project for purposes of (i) housing a resident management staff, and (ii) in cases of

substantial rehabilitation, where the costs of converting larger units to single rooms would be prohibitive; Provided, That no more than 5% of the units in any project (other than units occupied by management staff) can contain more than a single room.

(f) *Project Services.* Notwithstanding the provisions of § 221.536(b)(2), a SRO project may, subject to approval of the Commissioner, provide laundering and vending services. A SRO project may not include central or shared kitchen or dining facilities for providing food services to tenants.

(g) *Eligible Mortgagors.* Nonprofit, public body, limited distribution and general mortgagors are eligible. Cooperative and Investor Sponsor mortgagors are not eligible.

(h) *Section 8 Assistance.* SRO projects are not eligible for Section 8 project-based assistance. SRO project tenants, however, are eligible for tenant-based assistance under parts 882 and 887 of this title.

(i) *Substantial Rehabilitation.* SRO projects will not be eligible for refinancing under section 223(f) of the Act. SRO applications involving existing properties must meet one of the following criteria for substantial rehabilitation:

(1) The cost of the repairs, replacements, and improvements exceeds 15 percent of the property's value after completion of all repairs, replacements and improvements; or

(2) The repair program involves the replacement of at least two major building components. The term "major building component" includes roof structures; ceiling wall, or floor structures; foundations; plumbing systems; heating and air conditioning systems; or electrical systems.

(j) *Restriction against change in use.* The mortgagor and the Commissioner shall execute and record a use agreement, in form satisfactory to the Commissioner, requiring that the project be operated as a SRO rental project for a period of twenty years from the date of final endorsement, regardless of whether the mortgage is prepaid, except that, for good cause the Commissioner may agree to terminate the use agreement prior to its expiration.

(k) *Termination of program.* If, at any time, the Secretary determines that, based upon an evaluation of the program, the SRO insurance program is not economically sound, the Secretary may revise, suspend or terminate the program. Revision, suspension or termination would become effective 30 days after publication of the Secretary's determination in the **Federal Register.**

Dated: April 15, 1991.

Ronald A. Rosenfeld,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 91–9178 Filed 4–18–91; 8:45 am]

BILLING CODE 4210–27–M

federal register

Friday
April 19, 1991

Part IV

Department of Agriculture

Agricultural Stabilization and Conservation Service

7 CFR Part 729

Commodity Credit Corporation

7 CFR Part 1446

Peanuts; Interim Rules

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 729

Poundage Quota Regulations and Marketing Assessments for the 1991 Through 1995 Crops of Peanuts

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule sets forth regulations to implement: (1) The provisions of the Food, Agriculture, Conservation, and Trade Act of 1990 with respect to farm poundage quotas for the 1991 through 1995 crops of peanuts, and (2) the collection of marketing assessments required for the 1991 through 1995 crops by section 1105 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508). With respect to poundage quotas, the interim regulations address: (1) Establishment of farm quotas; (2) quota adjustments due to changes in the national quota; (3) reductions in quota for nonproduction; (4) reallocation of permanently released quotas and quotas reduced for nonproduction; (5) transfers, release, and reapportionment of quotas; (6) producing peanuts for experimental and research purposes; (7) special provisions for reallocation of increased quota, quota reduced for nonproduction, and permanently released quota in Texas; (8) special provisions for allocating increased quota to tenants; (9) issuing producer marketing cards; (10) assessment of penalties, waiver of penalties, and collection of penalties, and (11) recordkeeping and reporting requirements.

DATES: This interim rule is effective April 19, 1991. Comments must be received on or before May 20, 1991 in order to be assured of consideration.

ADDRESSES: Send comments to the Director, Tobacco and Peanuts Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this notice will be made available for public inspection in room 5750 South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Paul P. Kume (ASCS) 202–447–2716.

SUPPLEMENTARY INFORMATION: The Preliminary Impact Analysis describing the options considered in developing this interim rule is not required.

Executive Order 12291

This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and has been classified not major because it does not meet any of the three criteria identified under the Executive order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographical regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Title

The title and number of the Federal assistance program to which this interim rule applies are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since the Commodity Credit Corporation and the Agricultural Stabilization and Conservation Service are not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Program/Activity

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

Except with respect to § 729.205, the information collection requirements for the peanut poundage quota program were approved by the Office of Management and Budget (OMB), as required by 44 U.S.C. chapter 35, and assigned OMB control number 0560–0006. OMB approved the collection requirements through May 31, 1992. This interim rule does not change the information collection as approved by OMB. The information collection required by § 729.205 will not be applicable to the 1991 crop of peanuts because there is not an increase in any State's poundage quota for the 1991 crop. The information collections required by this section will be submitted not later than October 15, 1991. Public reporting burden for these collections of information is estimated to vary from 9 to 30 minutes per response, with an average of 14 minutes per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB# 0560–0006), Washington, DC 20503.

Title VIII of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624) amended the Agricultural Adjustment Act of 1938 (the "1938 Act") to provide a poundage quota program for the 1991 through 1995 crops of peanuts. In addition, section 1105 of the Omnibus Budget Reconciliation Act of 1990 provides for a marketing assessment equal to one percent of the national average quota or additional price support rate per pound, as applicable, for the applicable crop to be collected with respect to all marketings of 1991 through 1995 crops of peanuts. In most cases half of the assessment will be a reduction in producer proceeds made by the first purchaser of peanuts with the other half being a charge against the first purchaser directly.

This interim rule implements the amended provisions of the 1938 Act with respect to peanuts.

Since peanut farmers are now planting their 1991 crop of peanuts and need to be informed of program provisions as soon as possible and since this rule will affect those plans, it has been determined that it would be impracticable and contrary to the public interest to delay implementation of this rule. The interim rules are subject to change upon consideration of the comments. The most significant provisions of the interim rules are set forth below.

A. Establishment of National Poundage Quota and Apportionment of National Poundage Quotas to States

Statutory Provisions

Section 358–1(a)(1) of the 1938 Act, as amended, provides that the national poundage quota for peanuts for each of the 1991 through 1995 marketing years shall be established by the Secretary at

a level that is equal to the quantity of peanuts, in tons, that the Secretary estimates will be devoted in each such marketing year to domestic edible, seed, and related uses except that the national poundage quota for any such marketing year shall not be less than 1,350,000 tons. A 1991 national poundage quota of 1,550,000 tons was established and announced in December, 1990. The 1991 quota is 10,000 tons less than the 1990 quota.

Section 358–1(a)(3) of the 1938 Act, as amended, provides that the national poundage quota established for each of the 1991 through 1995 marketing years shall be apportioned among the States so that the poundage quota allocated to each State for each respective year shall be equal to the percentage of the national poundage quota allocated to farms in the State for 1990.

Interim Regulations

Section 729.201 of the interim regulations provides factors that shall be used to allocate the national poundage quota for each of the 1991 through 1995 crops of peanuts to the 16 States in which peanut poundage quota was allocated to farms in such States in 1990.

B. Increase in State Quota

Statutory Provisions

Section 358–1(b)(2)(A) of the 1938 Act, as amended, provides that in the event poundage quota apportioned to a State for any of the 1991 through 1995 marketing years is increased over the poundage quota apportioned to farms in the State for the immediately preceding year, except for apportioning the increase to Texas and a special provision for tenant's share of the increase, such increase shall be allocated proportionately, based upon the farm production history for the three immediately preceding years among:

(1) All farms in the State for each of which a farm poundage quota was established for the marketing year immediately preceding the marketing year for which the allocation is being made; and

(2) All other farms in the State on each of which peanuts were produced in at least two of the three immediately preceding crop years, as determined by the Secretary.

Interim Regulations

If the poundage quota allocated to a State is greater than the poundage quota allocated to such State for the immediately preceding marketing year, the interim regulations provide in § 729.204(b) that the amount of the increase shall be allocated to: (1) All quota farms in the State and (2) all other farms in the State that were nonquota farms in the preceding year and on which peanuts were produced in at least two years of the base period. "Quota farms" and "base period" have been defined in § 729.103.

Under the interim regulations the increased quota shall be allocated to eligible farms in the State by a factor, obtained by dividing the amount by which the State's quota was increased from the preceding year by the total of the farm peanut production history for all eligible quota and nonquota farms in the State. For a quota farm, the farm production history is the total of the produced and considered produced quantity of peanuts in the three year period preceding the year for which the determination is being made. For a nonquota farm, the farm production history is the total quantity of peanuts produced on the farm during the base period (the preceding three years). In many cases, however, a nonquota farm could become a quota farm after two years of production. The amount of increase allocated to each eligible quota and nonquota farm within the State shall be obtained by multiplying the factor by each individual farm's production history.

C. Decrease in State Quota

Statutory Provisions

Section 358–1(b)(2)(B) of the 1938 Act, as amended, provides that in the event the poundage quota apportioned to a State for any of the 1991 through 1995 marketing years is decreased from the poundage quota apportioned to farms in the State for the immediately preceding marketing year, the decrease shall be allocated among all the farms in the State for each of which a farm poundage quota was established for the marketing year immediately preceding the marketing year for which the allocation is being made.

Interim Regulations

The interim regulations provide in § 729.204(c) that if the poundage quota allocated to a State for the current year is less than the poundage quota allocated to such State for the preceding year, the current year's basic quota for each quota farm in the State shall be determined by multiplying the current year's preliminary quota by a factor determined by dividing the State quota less the State reserve by the total of the current year's preliminary quotas on all farms in the State.

D. Quota Considered Produced and Adjustment of the Quota Produced

Statutory Provisions

Section 358–1(b)(4) of the 1938 Act, as amended, provides that the farm poundage quota shall be considered produced on a farm if: (1) The farm poundage quota was not produced on the farm because of drought, flood, or any other natural disaster, or any other condition beyond the control of the producer as determined by the Secretary; (2) the farm poundage quota for the farm was released voluntarily for only one of the three marketing years immediately preceding the marketing year for which the determination is being made; or (3) the farm poundage quota was leased to another owner or operator of a farm within the same county for transfer, to such farm but only if the lease was the only one of its kind for the quota in the 3 immediately preceding marketing years.

Section 358b(a)(2) of the 1938 Act, as amended, provides further that any farm poundage quota transferred by the owner or operator of a farm to any other farm owned or controlled by the owner or operator that is in the same county or contiguous to the county in the same State and that had a farm poundage quota for the preceding year's crop, shall not result in any reduction in the farm poundage quota for the transferring farm if the transferred quota is produced or considered produced on the receiving farm.

Interim Regulations

The interim regulations in § 729.103(b) define "considered produced credit". Under the definition such credit may not exceed the basic quota established for the farm for the current year. If the marketing of peanuts from a farm in the current year is less than the basic quota, considered produced credit shall be the amount of:

(1) Peanuts that the county committee determines, according to instructions issued by the Deputy Administrator were not produced because of drought, flood or any other natural disaster beyond the control of the producer. Conditions beyond the control of the producer are defined in the interim regulations to be:

(a) Unavailability of an adequate supply of seed to plant an acreage of peanuts that is sufficient to produce the basic quota.

(b) A court order that prevents access to the farm or otherwise prevents the release or transfer of the peanut quota in a manner in which considered produced credit could be earned.

(2) Peanut poundage quota that was voluntarily released, or leased and transferred, for the current year if neither of the following apply:

(a) Part, or all, of the quota was voluntarily released during 2 or more of the 3 preceding crop years, or

(b) Part, or all, of the quota was leased and transferred to another farm within the same county during 2 or more of the 3 preceding years.

(3) Basic quota that was not produced on the farm if the Farmers Home Administration had control of or title to such farm.

(4) Basic quota that is designated for reduction under a Conservation Reserve contract.

(5) Basic quota in an eminent domain pool.

The interim regulations provide in § 729.212(k) that in the case of a temporary transfer of quota by the owner or operator, if the receiving farm's marketings exceed that farm's basic quota, the excess marketings shall be deducted from the receiving farm's marketings, to the extent of the transfer, and shall be considered marketings of the transferring farm for production history purposes.

E. Reduction in Farm Quota for Nonproduction of Quota

Statutory Provisions

Section 358–1(b)(3)(A) of the 1938 Act, as amended, provides that, insofar as practicable and on such fair and equitable basis as the Secretary may by regulation prescribe, the farm poundage quota established for a farm for the 1991 through 1995 marketing years shall be reduced to the extent that the Secretary determines that the farm poundage quota established for the farm for any two of the three marketing years preceding the marketing year for which the determination is being made was not produced, or considered produced, on the farm.

Section 358–1(b)(3)(B) of the 1938 Act, as amended, further specifies that, for the purposes of such reduction, the farm poundage quota for any such preceding marketing year shall not include (1) any increases for undermarketings for quota peanuts from the previous years; or (2) any increase resulting from the allocation of quotas voluntarily released for one year.

Interim Regulations

The interim regulations provide in § 729.203 for determining the quantity of nonproduced quota for a farm. The interim regulations provide in § 729.204(d) that the basic quota otherwise determined for a farm shall be reduced if, during any two years of the base period, the county committee determines that part, or all, of the basic quota was not produced or considered produced on the farm. The reduction shall be with respect to the 1991 crop, the sum of the two smallest quantities including zero pounds if applicable, of nonproduced quota determined for the farm for the base period. This interim method of reduction will result in a reduction that is exactly equal to the deficiency in production that resulted in the need to reduce the quota. This result should be accurate because of an adjustment provided in § 729.203.

If the basic quota for a farm is reduced for nonproduction, then, for purposes of future crop year calculations the nonproduced quota history will be adjusted downward by the amount that the basic quota was reduced. The adjustment shall be made in the nonproduced quota by starting with the year in which the nonproduced quantity was smallest during the most recent 2 years of the base period for the year in which the quota is reduced. If the nonproduced quota was equal in each of the most recent 2 years of that base period the adjustment shall begin with the most recent year of such 2 year period. The nonproduced quota shall be adjusted downward by the amount that the basic quota was reduced for nonproduction. If the nonproduced quota for the year the adjustment begins is less than the amount by which the farm's basic quota was reduced for nonproduction, the adjustment to the nonproduced quota shall continue in the remaining year of the most recent 2 years of the base period of the year of the reduction until the nonproduced quota has been adjusted by an amount equal to the amount the basic quota was reduced for nonproduction or until the nonproduced quota in the most recent 2 years of the base period has been reduced to zero.

This adjustment in nonproduced quota will prevent a reduction during more than one year for the same underproduced quota.

F. Reallocation of Quotas Reduced for Nonproduction and Quotas Permanently Released

Statutory Provisions

Section 358–1(b)(6) of the 1938 Act, as amended, provides that the total amount of the farm poundage quota reduced for nonproduction or permanently released shall be reallocated in such manner as the Secretary may by regulation prescribe to other farms in the State on which peanuts were produced in at least two of the three crop years immediately preceding the year for which such allocation is being made. However, not more than 25 percent of such amount shall be allocated to farms for which no farm poundage quota was established for the immediately preceding crop year (nonquota farms). Further, the reallocation to any nonquota farm shall not exceed the average farm production of peanuts for the three immediately preceding years during which peanuts were produced on such farm.

Interim Regulations

The interim regulations provide in § 729.204(e) that the quantity available for reallocation because of nonproduction of quota and quota permanently released shall be reallocated by factor among quota and nonquota farms on which peanuts were produced and marketed in at least 2 years of the 3 preceding crop years, except that not more than 25 percent of the total quota available for reallocation shall be reallocated to nonquota farms.

The interim regulations provide that a factor shall be determined to reallocate the available pounds to eligible farms as follows:

(1) Determine State totals of the farm production history separately for eligible quota and nonquota farms.

(2) If the totals of the farm production history from eligible quota farms are equal to or greater than 3 times the total of the farm production history from eligible nonquota farms, a single factor shall be used to reallocate the available quota because not more than 25 percent of the available quota would be reallocated to nonquota farms by a single factor. The factor would be determined by dividing the quota available for reallocation by the sum of the separate totals of farm production history from eligible quota and nonquota farms.

(3) If the total of farm production history from eligible quota farms is less than 3 times the total of the farm production history from eligible nonquota farms, separate factors for eligible quota and nonquota farms shall be determined as follows:

(a) For eligible quota farms, the factor shall be determined by multiplying the quota available for reallocation by .75 and dividing the result by the State total of the production history from eligible quota farms.

(b) For eligible nonquota farms, the factor shall be determined by multiplying the quota available for reallocation by .25 and dividing the result by the State total of farm production history from eligible nonquota farms. However, if the factor

is greater than 0.3333, a factor of 0.3333 shall be used to reallocate to nonquota farms such nonquota farms' share of the quota available for reallocation.

G. Reallocation of Increased Quota, Quota Reduced for Nonproduction, and Permanently Released Quota in Texas

Statutory Provisions

Section 358–1(b)(2)(B) of the 1938 Act, as amended, provides that in the event the poundage quota apportioned to Texas for any of the 1991 through 1995 marketing years exceeds the poundage quota apportioned to farms in the State for the immediately preceding year, 33 percent of the increased quota shall be allocated to farms having poundage quotas for the 1990 marketing years in any Texas county in which the production of additional peanuts in 1989 exceeded the total quota allocated to the county for the 1989 marketing year.

Section 358–1(b)(6) (B) and (C) of the 1938 Act, as amended, provides that all of the quota voluntarily released or reduced for nonproduction on all Texas farms, except that portion reallocated to nonquota farms which shall not exceed 25 percent of the pounds available for reallocation, shall be reallocated to farms having poundage quotas for the 1990 marketing year in any Texas county in which the production of additional peanuts in 1989 exceeded the total quota allocated to the county for the 1989 marketing year.

Section 358–1 (b)(2)(B) and (b)(6)(C) of the 1938 Act, as amended, provides for Texas that 33 percent of the State's increased quota as well as the pounds available for reallocation because on nonproduction of quota and permanently released quota, shall be apportioned to counties in which the production of additional peanuts exceeded the total quota allocated to the county for the 1989 marketing year and such apportionment shall be based on the total production of additional peanuts for the 1988 crop, except that the total quota allocated to any county shall not be increased by more than 100 percent of the basic quota assigned to the county for the 1989 marketing year, if that county had more than 10,000 tons of quota for the 1989 marketing year.

Section 358–1 (b)(2)(B) and (b)(6)(C) of the 1938 Act, as amended, further provides that for Texas counties in which the production of additional peanuts exceeded the total quota allocated to the county for the 1989 marketing year such counties share of the State's increase in quota and the pounds available for reallocation for nonproduction and permanently released quotas, shall be allocated only to quota farms from which additional peanuts were delivered under contract with handlers for the marketing year immediately preceding the marketing year for which the allocation is being made.

The remaining 67 percent of the increased quota allocated to Texas shall be allocated to farms in the State according to the method used to allocate the quota increase to farms for other States.

Interim Regulations

The interim regulations provide in § 729.204(f) that 33 percent of any increase in the Texas peanut poundage quota, and all of the quota reduced for nonproduction on all Texas farms, except that portion reallocated to all eligible nonquota Texas farms which portion shall not exceed 25 percent of the available pounds for reallocation, shall be reallocated to farms in any Texas county in which the production of additional peanuts in 1989 exceeded the total of 1989-crop effective quotas on all farms in such county.

In each of the following Texas counties, the production of additional peanuts in 1989 exceeded the total of 1989-crop effective quotas on all farms in the respective county: Andrews, Briscoe, Childress, Collingsworth, Dickens, Donley, Gaines, Hale, Hall, Hardeman, Haskell, Hockley, Knox, Lamb, Terry, Wheeler, Wilbarger and Yoakum counties (eligible counties).

Any quota to be allocated under the interim regulations to eligible Texas counties shall be apportioned to such eligible counties on the basis of the total production of additional peanuts in the respective counties for the 1988 crop. Based on the production of additional peanuts in 1988, the quota shall be apportioned to eligible counties according to the factors provided in § 729.204(f)(2) of the interim regulations.

Gaines county is the only county for which the total of farm basic quotas exceeded 20,000,000 pounds for the 1989 crop of peanuts. The total of farm basic quotas in Gaines county for the 1989 crop was 22,853,615 pounds. Accordingly, if the cumulative increase in the basic quota for Gaines county for the 1991 through 1995 crops exceeds 22,853,615 pounds, the amount in excess of 22,853,615 pounds shall be apportioned to the remainder of the eligible Texas counties on the basis of the total production of additional peanuts in the respective counties for the 1988 crop.

The interim regulations provide in § 729.204(f) that a farm, to receive a share of any quota allocated to eligible Texas counties from increased quota, permanently released quota, or quota reduced for nonproduction shall have had a basic quota greater than zero for the 1990 crop of peanuts. However, if a farm that had a basic quota greater than zero for the 1990 crop is reconstituted subsequent to 1990, the farm(s) that result from the reconstitution shall not be considered as eligible farms. A farm allocation factor shall be determined under the interim regulations for each eligible farm as follows:

(1) Using data from the year preceding the year for which the reallocation is being made, determine a factor by dividing the quantity of contract additional peanuts delivered to handlers from the farm by the total remaining peanuts marketed from the farm.

(2) Total all factors determined in accordance with paragraph 1.

(3) The farm allocation factor shall be determined by dividing the factor determined in accordance with paragraph 1 by the total determined in accordance with paragraph 2.

Under the interim regulations the quotas for eligible nonquota farms in any Texas county shall be determined in the same manner as provided for other States.

Further, under the interim regulations any increase in the State poundage quota for Texas, except for the 33 percent allocated to eligible Texas counties, shall be allocated to eligible farms in any Texas county including farms in eligible counties, in the same manner that increased quota is allocated to eligible farms in any other State, as provided in § 729.204(b).

H. Allocation of Increased Quota to Tenants

Statutory Provisions

Section 358–1(b)(2)(D) of the 1938 Act, as amended, provide that subject to the terms and conditions prescribed by the Secretary, on farms that were leased to a tenant for peanut production, the tenant shall share equally with the owner of the farm, in that percentage of the quota allocated to the farm because of an increase in the quota from the previous year and otherwise allocated to the farm as the result of the tenant's production on the farm of additional peanuts. Not later than April 1 of each year or as soon as practicable, the tenant's share of any such quota shall be allocated to a farm within the county owned by the tenant or sold by the tenant to the owner of any other farm within the county and permanently transferred to that farm. Otherwise, such quota shall be allocated to other quota farms in the State as part of quota reduced from farms in the State due to

the failure to produce the quota and for permanently released quota.

Interim Regulations

The interim regulations provide in § 729.205 that if the poundage quota allocated to a State is greater than the poundage quota allocated to the State for the preceding year, to the extent that a tenant leased all or part of a farm for the production of peanuts in the three years immediately preceding the year for which the determination is being made, the tenant shall share equally with the owner of the farm in any increase in the farm's basic quota that resulted from the tenant's production of additional peanuts on the farm. In order for a tenant to share in the increase, the tenant must have produced peanuts on the farm in the year immediately preceding the year for which the increase is being made. Further, for a tenant to share in the increase, such tenant (1) shall not have any ownership interest in the farm, (2) shall file an application for such increased quota by February 15 of the crop year in which the increase is made, (3) shall provide evidence that is acceptable to the county committee of production of additional peanuts on the farm during the base period.

The interim regulations also provide that the tenant's share of the quota increase shall be transferred to a farm within the county that is owned by the tenant or transferred by sale to a farm within the county that is owned by another person. However, to transfer such quota to an owned farm, or by sale to another owner, the tenant must file a record of transfer with the county committee and such record of transfer must be filed by the later of April 1 of the current year or 30 days after the date the tenant is notified of the tenant's share of such basic quota. If the quota is not transferred within the allotted time the quota shall be added to the State quota not produced and permanently released and may be reallocated to eligible quota and nonquota farms.

I. Allocation of Quota for Experimental and Research Purposes

Statutory Provisions

Section 358c of the 1938 Act, as amended, provides that the Secretary may permit a portion of the poundage quota for peanuts apportioned to any State to be allocated from the State's quota reserve, to land-grant institutions and colleges eligible to receive funds under the Act of August 30, 1890, including Tuskegee Institute and as appropriate, the Agricultural Research Service of the Department of Agriculture to be used for experimental and research purposes. The quantity of the quota allocated to an institution under this section may not exceed the quantity of the quota held by each such institution during the 1985 crop year, except that the total quantity allocated to all institutions in a State shall not exceed one tenth of one percent of the State's basic quota. Further, the director of the agricultural experiment station for a State shall be required to ensure, to the extent practicable, that farm operators in the State do not produce quota peanuts in excess of the quantity needed for experimental and research purposes.

Interim Regulations

The interim regulations provide in § 729.206 that for the 1991 crop of peanuts a basic quota shall be apportioned from the State reserve to land-grant institutions identified in the Act of May 8, 1914, colleges eligible to receive funds under the Act of August 30, 1890, including Tuskegee Institute and, as appropriate, the Agricultural Research Service of the Department of Agriculture for experimental and research purposes.

The interim regulations provide that the amount of quota allocated to all eligible institutions in the State shall be based on the poundage quota allocated to the institution or the quantity of peanuts that were exempted from payment of marketing penalties by such institution for the 1985 crop year but shall not exceed one tenth of one percent of the State's basic quota. If necessary to stay within the limitations, the amount of allocation to each eligible institution shall be proportionate to the amount of quota for which each institution otherwise qualifies. With respect to the 1992 through 1995 crops of peanuts, the basic quota for each institution shall be determined in the same manner as for other farms within the State, except that the quota shall not be reduced for any nonproduction of the 1989 and 1990 crops of peanuts.

J. Release of Quota and Reapportionment of Quota Temporarily Released

Statutory Provisions

Section 358–1(b)(7) of the 1938 Act, as amended, provides that a farm poundage quota, or any portion thereof, may be temporarily released to the extent that such quota or any part thereof will not be produced on the farm for the marketing year. The section further provides that any farm poundage quota so released in a State shall be allocated to other farms in the State on such basis as the Secretary may by regulation prescribe.

Interim Regulations

The interim regulations provide in § 729.213 that the effective quota may be released temporarily by a date established by the State committee for the county in which the farm is located. Further, the interim regulations provide that a producer may file a request for reapportionment of released quota by the same date. Temporarily released quotas will be reallocated by the county committee to farms that requested reapportioned quota. When reapportioning quota, the county committee shall give priority to producers on nonquota farms and to producers on farms having basic quotas that are significantly below the average basic quota in the county. Otherwise, the county committee shall reapportion released quota in amounts determined by the county committee to be fair and reasonable on the basis of (1) experience in producing peanuts, (2) tillable cropland, and (3) soil and other physical factors affecting the production of peanuts. Further, a farm that transferred quota from a farm by sale, lease, or owner effective for the current year shall not receive reapportioned quota and the pounds reapportioned to a farm shall not result in an effective quota that exceeds an amount determined by multiplying the farm's tillable cropland by the higher of either the farm yield or the highest actual yield in the three preceding years. If any released quota remains in the county after the county committee has reapportioned quota based on the issued guidelines, the remaining released pounds shall be submitted to the State committee for reallocation to requesting county committees. The requesting county committees will reallocate the released quota to farms according to issued guidelines. The interim regulations will permit reallocations to be made on an equitable basis.

K. Sale, Lease, and Other Transfer of Farm Poundage Quota

Statutory Provisions

Section 358b of the 1938 Act, as amended, provides that subject to such terms, conditions, or limitations as the Secretary may prescribe, the owner, or operator with the permission of the owner, of any farm for which a farm poundage quota has been established may sell or lease all or any part of the poundage quota to any other owner or operator of a farm within the same county for transfer to the farm. Also,

under such terms and conditions as the Secretary may by regulation prescribe, a lease of poundage quota may be entered into in the fall or after the normal planting season if not less than 90 percent of the basic quota (the farm quota exclusive of undermarketings and temporary quota transfers), plus any poundage quota transferred to the farm, has been planted or considered planted on the farm from which the quota is to be leased. The section further provides that in the case of a fall transfer after the normal planting season by a cash lessee, the landowner shall not be required to sign the transfer authorization.

Additionally, the section provides that the owner or operator of a farm may transfer all or any part of the farm poundage quota for the farm to any other farm owned or controlled by the owner or operator that is in the same county or in a county contiguous to the county in the same State and that had a farm poundage quota for the preceding year's crop. Any farm poundage quota transferred under this provision shall not result in any reduction in the farm poundage quota for the transferring farm if the transferred quota is produced or considered produced on the receiving farm.

The section also provides that when a State's poundage quota is less than 20,000,000 pounds, the poundage quota may be transferred between any farms within the State.

Interim Regulations

The interim regulations provide in § 729.212 that:

(1) Permanent transfers and temporary "spring" transfers of quota shall be based on part or all of the farm's basic quota.

(2) For a transfer, except a fall transfer, to be effective for the current year the transfer must be filed, before August 1 of the current year, in the county ASCS office that serves the county in which the transferring farm is located for administrative purposes.

(3) A fall transfer must be filed, after July 31 of the current year and before February 1 of the next year, in the applicable county ASCS office.

(4) A permanent transfer of quota may be filed at anytime. However, if the transfer is filed after July 31, the transfer agreement shall not be approved until the next year's quota is determined for the transferring farm. If a permanent transfer is filed after July 31 but before the establishment of the poundage quota for the following year, an addendum to the transfer agreement must provide for any required adjustment in the transferred quota before the transfer is approved. The ability to file an agreement to permanently transfer quota at anytime (1) will give owners more flexibility in their farming operation, (2) permit persons, who plan to sell a farm before the next year's quota has been established, to permanently transfer the quota before selling the farm, and (3) permit the filing of a transfer agreement as soon as the interested parties reach an agreement.

(5) A transfer shall not be approved if any person, whose signature is required to perfect the transfer, owes a peanut poundage quota penalty; however, if the transfer is by lease or by sale the transfer may be approved if the proceeds from the lease or sale are to be applied to the debt.

The interim regulations provide in § 729.212 that, transfers filed after July 31 and before February 1 (fall transfers) may be approved, if (1) the reported or determined acreage of peanuts in the current year plus any acreage for which the county committee has approved prevented planted credit for the current year when multiplied by the larger of the farm yield or the highest actual yield per acre during the base period equal or exceeds an amount equal to 90 percent of an amount determined by subtracting the effective undermarketings from the farm's effective quota; (2) the county committee determines that the failure to produce peanuts in an amount equal to the effective quota less the effective undermarketings was due to conditions beyond the control of the producer; and (3) the quantity to be transferred does not exceed the quota balance remaining on the farm's marketing card(s).

The interim regulations also provide that approval by the landowner for a record of fall transfer by a cash lessee is not required; however, for such transfers by a cash lessee, the lessee will be required to furnish satisfactory evidence of the cash lease to the county committee.

L. Miscellaneous Provisions

Interim Regulations

(1) Provide for a national reserve in the amount of the 0.0025 times the national quota announced by the Secretary, will be held each year by each State for the purpose of correcting quota allocation errors.

(2) Provide in § 729.213(c) that any permanent release of quota must be filed within 30 days after the date of mailing the notice of the farm's quota.

(3) Provide in § 729.316 for the collection of a marketing assessment when peanuts are marketed and provide for the remittance of the assessment within 5 days after form ASCS–1007 is transmitted to ASCS.

(4) Provide in § 729.207 for the reduction of a farm's preliminary quota if the farm's basic quota exceeds an amount determined by multiplying the farm's tillable cropland by the larger of the established farm yield or the highest actual yield for the farm during the past 3 years.

(5) Provide in § 729.312 that a county committee may waive or reduce a penalty in any case in which it determines with concurrence of the State committee acting in accordance with instructions of the Deputy Administrator, State and County Operations, ASCS, that the violation that was the basis of the penalty was unintentional or without knowledge on the part of the parties concerned.

(6) Provide in § 729.403 that the farm operator of a farm from which peanuts are marketed as "green peanuts" and the buyer of such peanuts must report the purchases of green peanuts to the county ASCS office. In addition, the buyer must maintain records of green peanut purchases. Failure to maintain records and make reports could subject the farm operator, or buyer, as applicable to marketing penalties.

(7) Contain other provisions to effectively implement the national quota for peanuts and related provisions in the new legislation.

List of Subjects in 7 CFR Part 729

Poundage quotas, Peanuts, Penalties, Reporting and recordkeeping requirements.

Interim Rule

For reasons set forth in the preamble, 7 CFR part 729 is revised to read in its entirety as follows:

PART 729—PEANUTS

Subpart A—General Provisions

Sec.

Subpart B—Poundage Quotas, Notices of Quotas, Transfers, and Release and Reapportionment

Authority: 7 U.S.C. 1301, 1357 et seq., 1372, 1373, 1375; 7 U.S.C. 1445c–3.

Subpart A—General Provisions

§ 729.101 Paperwork Reduction Act assigned number.

The information collection requirements contained in 7 CFR part 729 have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0560–0006.

§ 729.102 Applicability.

The regulations contained in 7 CFR part 729 are issued in accordance with the Agricultural Adjustment Act of 1938, as amended, and are applicable to the 1991 through 1995 crops of peanuts. They govern the establishment of farm poundage quotas, the issuance of marketing cards, the identification of marketings of peanuts, the collection and refund of penalties, the keeping of records, and the making of reports incident thereto.

§ 729.103 Definitions.

(a) *Applicability.* The definitions set forth in this section shall be applicable for all purposes of program administration for peanuts except as may otherwise be indicated. The definitions in, and provisions of, parts 718, 719, and 720 of this chapter and 1446 of this title are hereby made applicable to these regulations unless the context or subject matter or the provisions of these regulations require otherwise.

(b) *Terms.* The following terms shall be defined as set forth in this paragraph.

Act. The Agricultural Adjustment Act of 1938, as amended.

Additional peanuts. Any peanuts which are marketed from a farm other than peanuts marketed or considered marketed as quota peanuts.

ASCS. The Agricultural Stabilization and Conservation Service of the Department of Agriculture.

Base period. The 3 crop years immediately preceding the current year for which a basic quota is being established.

Basic penalty rate. The per pound amount determined by multiplying the national support level per ton for quota peanuts, as announced by the Secretary for the applicable marketing year, by 1.4 and dividing the result by 2000.

Basic quota. A farm's share of the peanut poundage quota allocated to a State. The basic quota for the current year is the preliminary quota as adjusted pursuant to this part for any:

(i) Increase or decrease in the State poundage quota from the poundage quota allocated to the State for the preceding year;

(ii) Reduction in the quota due to nonproduction;

(iii) Reduction for permanent release of quota from the farm in the current year;

(iv) Permanent transfers of quota to or from the farm for the current year; ⅓and

(v) Reallocation of quota to the farm from quotas;

(A) Reduced for nonproduction.

(B) Permanently released.

Buyer. A person, who also may be known as a handler, who:

(i) Buys or otherwise acquires peanuts in any form;

(ii) Markets, as a commission merchant, broker, cooperative, agent, or in any other capacity, any peanuts for the account of a producer and is responsible to the producer for the amount received for the peanuts; or

(iii) Receives peanuts as collateral for, or in settlement of, a price support loan.

CCC. The Commodity Credit Corporation, a financial instrumentality within the United States Department of Agriculture.

Commingled peanuts. Peanuts that were produced on 2 or more farms and loaded into a single conveyance in such manner that the peanuts become, or can become, intermingled and as a result making it impossible to divide the peanuts into separate lots in such manner that the peanuts may be identified accurately as to the farm of production at the time of marketing.

Considered produced credit. If the marketings of peanuts from a farm in the current year are less than such farm's basic quota, the credit granted in the current year (but not to exceed the basic quota established for the farm for the current year less the pounds of peanuts which were produced and marketed from the farm during the current marketing year) for the amount of:

(i) Peanuts that the county committee determines, according to instructions provided by the Deputy Administrator, were not produced because of drought, flood or any other natural disaster or any other condition beyond the control of the producer. Conditions beyond the control of the producer are for this purpose:

(A) Unavailability of an adequate supply of seed to plant an acreage of peanuts that is sufficient to produce the basic quota.

(B) A court order that prevents access to the farm or otherwise prevents the release or transfer of the peanut quota in a manner in which considered produced credit could be earned.

(ii) Peanut poundage quota that was voluntarily released or leased and transferred for the current year if neither of the following are applicable:

(A) Part, or all, of the quota was voluntarily released during any 2 or more years of the base period, or

(B) Part, or all, of the quota was leased and transferred to another farm within the same county during any 2 or more years of the base period.

(iii) A farm's basic quota that was not produced if the Farmers Home

Administration had control of or title to such farm.

(iv) Peanut quota converted from the production of peanuts in accordance with part 704 of this chapter.

(v) Quota in an eminent domain pool.

Converted penalty rate. The per pound amount determined by multiplying the basic penalty rate by the result obtained when the absolute value (positive or negative) of the difference between the acreage of peanuts reported by the farm operator and the acreage of peanuts determined to have been planted on the farm as determined in accordance with part 718 of this chapter is divided by the acreage of peanuts determined for such farm.

DASCO. The Deputy Administrator, State and County Operations, ASCS.

Director. The Director, or Acting Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

Effective quota. The basic quota as adjusted for the applicable crop year for:

(i) Temporary transfers of quota to or from the farm;

(ii) Temporary releases of quota from the farm;

(iii) Temporary reapportionment of quota to the farm;

(iv) Quota converted and reduced in the current year from the production of peanuts pursuant to regulations in part 704 of this chapter for the Conservation Reserve Program, or in any other regulations for that program or similar program; and

(v) Effective undermarketings.

Electronic (smart) marketing card. A CCC approved standard card for use in identifying peanuts when marketed, and which contain a micro computer chip on which applicable:

(i) Farm data is recorded by the county ASCS office before the marketing card is issued to the farm operator.

(ii) Marketing data is recorded at the buying point when the peanuts are marketed.

Excess peanuts. The quantity of peanuts:

(i) Marketed or considered marketed as quota peanuts from the farm in the current marketing year in excess of the farm's effective quota, or

(ii) Marketed as contract additional peanuts from the farm in the current marketing year in excess of the amount contracted in accordance with part 1446 of this title.

False identification. The deliberate or inadvertent identification of peanuts at the time of marketing as being produced on a farm when the peanuts were not produced on such farm.

Farm production history. The sum of the produced and considered produced quantity of peanuts for a farm during the base period.

Farm yield. The yield established for a farm for the immediately preceding year on the basis of peanut production on the farm or on similar farms during the years 1973 through 1977 or, if a farm yield was not established for the preceding year, the yield appraised by the county committee that is fair and reasonable on the basis of farm yields established on other farms in the locality on which the soil and other physical factors affecting production are similar.

Farmers stock peanuts. Peanuts produced in the United States which have not been shelled, crushed, cleaned, or otherwise changed (except for removal of foreign material, loose shelled kernels, and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers.

Final acreage. The acreage devoted to peanuts on a farm, excluding any acreage devoted to green peanuts, as determined in accordance with part 718 of this chapter.

Green peanuts. Peanuts which, before drying or removal of moisture from the peanuts either by natural or artificial means, are marketed by the producer for consumption exclusively as boiled peanuts.

Inspector. A Federal or Federal-State inspector authorized or licensed by the Secretary, U.S. Department of Agriculture to grade peanuts.

Loan additional peanuts. Peanuts which are pledged as collateral for a price support loan at the applicable additional loan rate established by or for CCC.

Market. To dispose of peanuts (including farmers stock peanuts, shelled peanuts, cleaned peanuts, or peanuts in processed form) by voluntary or involuntary sale, barter, or exchange, or by gift inter vivos. The terms "marketed", "marketing", and "for market" shall have corresponding meanings to the term "market" in the connection in which they are used. The terms "barter" and "exchange" shall include the use of any quantity of peanuts by the producer as payment to another for any reason including payment for the harvesting, picking, threshing, cleaning, crushing, or shelling of peanuts, or for any other service rendered to the producer. Any lot of farmers stock peanuts will be considered as marketed when acquired from the producer. Peanuts which are delivered by the producer as collateral for, or in settlement of, a price support loan will be considered as marketed at the time of delivery. Delivery shall be deemed to have occurred when the peanuts are unloaded at the delivery point. Any peanuts produced on a farm which are retained on the farm after January 31, or such later date as may be established by the Executive Vice President, CCC, of the year following the year in which the peanuts were produced shall be considered as marketed for domestic edible use as of January 31, or such later date.

Marketing year. The 12 month period beginning on August 1 of a current year in which the peanuts are grown and ending July 31 of the following year.

National poundage quota. The poundage quota announced by the Secretary for the relevant crop year.

Nonquota farm. A farm that does not have a basic quota greater than zero for the current year.

Peanut quantity marketed or considered marketed. With respect to a lot of farmers stock peanuts, the quantity of such peanuts that is marketed or considered marketed shall be:

(i) *Inspected peanuts.* For peanuts inspected by the Federal-State Inspection Service at the time of marketing, the gross weight of the lot less foreign material in the lot and less moisture in excess of 7 percent of gross weight for the lot.

(ii) *Noninspected peanuts.* For peanuts not inspected by the Federal-State Inspection Service, at the time of marketing, the net weight determined in accordance with part 1446 of this title and recorded on form ASCS–1007, Inspection Certificate and Sales Memorandum.

(iii) *Shelled peanuts.* For shelled peanuts marketed by a producer, the poundage of the shelled peanuts in the lot multiplied by a factor of 1.5.

Peanuts. All peanuts produced, excluding:

(i) Any peanuts which were not dug or were not picked or threshed before or after marketing from the farm; and

(ii) Green peanuts.

Planted acreage. The acreage on which peanuts were planted in a workmanlike manner determined in accordance with the provisions of part 718 of this chapter.

Preliminary quota. For the current year, the basic quota established for the farm for the preceding year.

Quota farm. A farm having a basic quota greater than zero in the current year.

Quota peanuts. Peanuts (except green peanuts) which are marketed or considered marketed from a farm for

domestic edible use. Quota peanuts shall be considered to be all peanuts which are dug on a farm except the following:

(i) Green peanuts;

(ii) Peanuts which are placed under loan at the additional loan rate and not redeemed by the producer;

(iii) Peanuts which are marketed in accordance with the requirements of this part as contract additional peanuts.

(iv) Peanuts considered marketed but because of conditions beyond the control of the producer had no commercial value as determined by the ASCS at the time the peanuts were marketed.

Seed sheller. A person who in the course of such person's usual business operations shells peanuts for use as seed for the subsequent year's crop.

Tillable cropland. Cropland (excluding orchards, vineyards, land devoted to trees, and land being prepared for nonagricultural uses) which the county committee determines can be planted to crops without unusual preparation or cultivation.

Undermarketings. (i) *Actual.* With respect to the 1991 crop, the pounds by which a farm's effective quota exceeds the larger of:

(A) The sum of peanuts retained on the farm for seed or other uses and the production of Segregation 1 peanuts on the farm, or

(B) The pounds of peanuts marketed or considered marketed from the farm as quota peanuts.

(ii) *Cumulative actual.* The sum of the actual undermarketings for a farm for the 1990 and subsequent crop less the:

(A) Cumulative quantity of such undermarketings that have been allocated to such farm as effective undermarketings,

(B) Amount of quota reduced on such farm for nonproduction of quota.

(iii) *Effective.* The amount by which the effective quota, as otherwise determined for a farm in accordance with this part, will be increased in the current year from cumulative actual undermarketings. If 10 percent of the national poundage quota for the current year is:

(A) Equal to or greater than the cumulative actual undermarketings on all farms in the nation, the increase for such farm shall be the same as the farm's cumulative actual undermarketings.

(B) Less than the cumulative actual undermarketings on all farms in the nation, the increase for such farm shall be:

(i) The same as the farm's cumulative actual undermarketings if such cumulative actual undermarketings are less than or equal to 10 percent of such farm's current year basic quota, or

(ii) If paragraph (iii)(B)(i) of this definition is not applicable, an amount equal to 10 percent of such farm's current year basic quota plus a share of the remainder of the farm's cumulative actual undermarketings as determined by apportioning the sum of the remainder of cumulative undermarketings on all farms in the nation in a manner so as to cause the current year effective undermarketings on all farms in the nation to equal 10 percent of the current year's national poundage quota.

Yield per acre or actual yield. The yield of peanuts for a farm for a crop year computed by dividing the total production of peanuts for the farm by the final acreage of peanuts for the farm.

§ 729.104 Administration.

(a) The regulations in this part will be administered under the general supervision of the Administrator, Agricultural Stabilization and Conservation Service (ASCS) and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees.

(b) State and county committees, and representatives and employees thereof do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall:

(1) Instruct a county committee to:

(i) Correct any action taken by such committee which is not in accordance with the regulations of this part, or

(ii) Withhold taking any action which such committee is known to be contemplating if such action is not in accordance with the regulations of this part.

(iii) Take any action required in accordance with the regulations of this part if such county committee has knowingly failed to take such action.

(2) May, after duly instructing a county committee in accordance with paragraph (c)(1) of this section, correct or modify any action required by these regulations that such committee has failed or refused to take.

(d) The Deputy Administrator:

(1) Shall instruct a State committee to:

(i) Correct any action taken by such committee which is not in accordance with the regulations of this part, or

(ii) Withhold taking any action which such committee is known to be contemplating if such action is not in accordance with this part.

(iii) Take any action required in accordance with regulations of this part if such State committee has knowingly failed to take such action.

(2) Shall after duly instructing the State committee in accordance with paragraph (d)(1) of this section, correct or modify any action required by these regulations that such committee has failed or refused to take.

(3) May waive or modify deadlines and other program requirements in cases for which the Deputy Administrator determines that lateness, or failure to meet such other requirements, as applicable, does not affect adversely the operation of the peanut program.

(e) Notwithstanding any provisions in the regulations of this part, the Administrator, ASCS, or a designee, may determine any question arising under the regulations of this part or may reverse or modify any determination made by a State or county committee.

§ 729.105 Types of peanuts.

Peanuts shall be classified by type into one of the following types as identified and determined by the Federal-State Inspection Service:

(a) Runner;

(b) Spanish;

(c) Valencia; or

(d) Virginia.

§ 729.106 Extent of calculations and rule of fractions.

(a) Computations made pursuant to this part shall be rounded in accordance with the provisions of part 793 of this chapter.

(b) Acreages shall be determined in tenths of an acre.

(c) Per pound penalties and liquidated damages shall be determined in tenths of a cent.

(d) The following calculations shall be determined in whole pounds:

(1) Peanuts produced;

(2) Considered produced;

(3) Marketed;

(4) Preliminary quotas;

(5) Basic quotas;

(6) Effective quotas;

(7) Farm yields; and

(8) Actual yields per acre.

§ 729.107 Location of farms for administrative purposes.

The location of a farm in a county for administrative purposes shall be as provided in Part 719 of this chapter.

§ 729.108 Request for reconsideration or appeal.

Any producer who is dissatisfied with a determination rendered by the county ASC committee under this part may file a request for reconsideration or appeal in accordance with part 780 of this chapter.

§ 729.109 Instructions and forms.

The Director shall cause to be prepared and issued such forms and instructions as are necessary for carrying out this subpart. The forms and instructions shall be approved by, and the instructions shall be issued by, the Deputy Administrator.

Subpart B—Poundage Quotas, Notices of Quotas, Transfers, and Release and Reapportionment

§ 729.201 Apportionment of National poundage quota to States.

The national poundage quota for peanuts for each of the 1991 through 1995 crops less a reserve for the correction of errors shall be apportioned to States in the same proportion that the national poundage quota was allocated to farms in the State for the 1990 crop year. Accordingly, based on the poundage quota allocated to farms in the State for the 1990 crop year, 16 States shall share in the 1991 through 1995 national poundage quotas for peanuts and the following factors shall be used to allocate such quota to the respective States: Alabama—0.13445344, Arizona—0.00062508, Arkansas—0.00208329, California—0.00043493, Florida—0.04275200, Georgia—0.41291226, Louisiana—0.00091430, Mississippi—0.00379765, Missouri—0.00015357, New Mexico—0.00583210, North Carolina—0.11052130, Oklahoma—0.06675097, South Carolina—0.00735223, Tennessee—0.00042788, Texas—0.13183290, and Virginia—0.07915610.

§ 729.202 Reserve for corrections.

A national reserve will be held for purposes of correcting errors that are made when determining a farm's basic quota. The reserve will be determined annually by multiplying the national quota announced by the Secretary by 0.0025. To the extent determined appropriate, the Deputy Administrator may authorize a State committee to correct any error in a farm's basic quota.

§ 729.203 Quota not produced.

(a) *Determining nonproduced quota.* For purposes of making a reduction in a farm's basic quota when the quantity of peanuts produced and considered produced on such farm during any 2 or more years of the base period is less than the basic quota established for such farm for the respective year, the nonproduced quota shall be determined, for any year of the base period for which the sum of the farm's produced and considered produced quota is less than such farm's basic quota established for such year. The nonproduced quota shall be determined by subtracting the sum of the farm's produced and considered produced quota for such year from the basic quota established for the farm for such year.

(b) *Adjustment to nonproduced quota.* For purposes of determining basic quota for subsequent crop years, if the basic quota for a farm is reduced for nonproduction in accordance with this subpart, the nonproduced quota for the base period of the year of the reduction, as determined in accordance with paragraph (a) of this section, shall be adjusted downward by the amount that the basic quota was reduced. The adjustment shall be made in the nonproduced quota by starting with the year in which the nonproduced quantity was smallest during the most recent 2 years of that base period. If the nonproduced quota was equal in each of the most recent 2 years of that base period the adjustment shall begin with the most recent year of such 2 year period. If the nonproduced quota for the year the adjustment begins is less than the amount by which the farm's basic quota was reduced for nonproduction, the adjustment to the nonproduced quota shall continue in the remaining year of the most recent 2 years of that base period until the nonproduced quota has been adjusted by an amount equal to the amount that the basic quota was reduced for nonproduction or until the nonproduced quota in each of the most recent 2 years of that base period has been reduced to zero.

§ 729.204 Determining a farm's basic quota.

(a) *No change in State poundage quota.* If the poundage quotas allocated to the State for the current year is the same as the State's poundage quota for the preceding year, the current year's basic quota for each quota farm in the State shall be the same as such farm's preliminary quota for the current year.

(b) *Increase in State poundage quota*—(1) *Eligible farms.* If the poundage quota allocated to a State for the current year is greater than the poundage quota allocated to such State for the preceding year, the amount of increase in the poundage quota shall be allocated proportionately, on the basis of each farm's production history as determined under this part, among:

(i) All quota farms in the State.

(ii) All other farms in the State that were nonquota farms in the preceding year and on which peanuts were produced and marketed in at least 2 years of the base period.

(2) *Factor.* A factor shall be determined to apportion, to eligible farms, the increase in the State's poundage quota. The factor shall be determined by dividing the amount of increase in the State poundage quota by the total of the farm production history for all eligible farms determined in accordance with paragraph (b)(1) of this section.

(3) *Basic quota.* The current year basic quota for each:

(i) Quota farm in the State shall be the preliminary quota plus an amount determined by multiplying the farm's production history by the factor determined in accordance with paragraph (b)(2) of this section.

(ii) Eligible farm that was a nonquota farm in the preceding year shall be the result obtained by multiplying such farm's production history by the factor determined in accordance with paragraph (b)(2) of this section.

(c) *Decrease in State poundage quota.* If the poundage quota allocated to a State for the current year is less than the poundage quota allocated to such State for the preceding year, the current year's basic quota for each quota farm in the State shall be determined by multiplying the current year's preliminary quota by a factor determined by dividing the State quota by the total of the current year's preliminary quotas on all farms in the State.

(d) *Reduction for nonproduction of quota*—(1) *Reconstitutions.* If the farm resulted from a farm reconstitution during the base period, any reduction determined according to this paragraph for nonproduction of the basic quota shall be made separately for the individual tracts in the farm in such manner as the Deputy Administrator determines to be appropriate.

(2) *Reduction amount.* The current year's basic quota otherwise determined for a farm in accordance with paragraph (a), (b), or (c) of this section shall be reduced if, with respect to any 2 years of the base period, the county committee determines that part, or all, of the basic quota for such farm was not produced or considered produced on the farm. The amount of the reduction shall be with respect to the 1991 crop, the sum of the two smallest quantities, including zero pounds if applicable, of nonproduced quota determined in accordance with this subpart for such farm during the base period.

(e) *Reallocation of quota reduced or permanently released*—(1) *Eligible farms.* The total of quotas permanently released and quotas reduced for nonproduction according to paragraph (d) of this section, hereinafter referred to as the State quota available for reallocation, shall be reallocated to farms on which peanuts were produced

and marketed in at least 2 years of the base period.

(2) *Factor for reallocation of quotas.* The factor(s) for reallocating the State quota available for reallocation shall be determined as follows:

(i) Determine State totals of farm production history separately for eligible:

(A) Quota farms.

(B) Nonquota farms.

(ii) If the totals of the farm production history from eligible quota farms is equal to or greater than 3 times the total of the farm production history from eligible nonquota farms, determine a factor by dividing the State quota available for reallocation by the sum of the separate State totals of farm production history from eligible quota and nonquota farms.

(iii) If paragraph (e)(2)(ii) of this section is not applicable, determine separate factors for eligible quota and nonquota farms as follows:

(A) For eligible quota farms, determine the factor by multiplying the State quota available for reallocation by .75 and dividing the result by the State total of the farm production history from eligible quota farms.

(B) For eligible nonquota farms, determine the factor by multiplying the State quota available for reallocation by .25 and dividing the result by the State total of farm production history from eligible nonquota farms.

(iv) Notwithstanding paragraphs (e)(2)(ii) and (iii) of this section, if the factor determined for a nonquota farm is greater than 0.3333 a factor of 0.3333 shall be used to reallocate to the nonquota farm such nonquota farm's share of the State quota available for reallocation.

(3) *Application of factor.* The current year's basic quota for each eligible farm determined according to paragraph (e)(1) of the section shall be determined by multiplying such farm's production history by the applicable factor determined in accordance with paragraph (e)(2) of this section. If a current year's basic quota otherwise has been determined for the farm in accordance with this section, the basic quota determined in accordance with this paragraph shall be added to any basic quota otherwise determined for such farm in accordance with this section.

(f) *Reallocation in Texas of increased quota, quota reduced for nonproduction, and permanently released quota*—(1) *Special provisions for certain Texas Counties.* Notwithstanding the provisions in paragraphs (b) and (e) of this section, 33 percent of any increase in the Texas peanut poundage quota resulting from an increase in the national quota and all of the quota reduced for nonproduction on all Texas farms, except that portion reallocated to nonquota farms in accordance with paragraph (e) of this section, shall be reallocated to farms having 1990-crop basic quotas in any Texas county in which the production of additional peanuts in 1989 exceeded the total of 1989-crop effective quotas on all farms in such county. The production of additional peanuts in 1989 exceeded the total of 1989-crop effective quotas on all farms in each of the following Texas counties: Andrews, Briscoe, Childress, Collingsworth, Dickens, Donley, Gaines, Hale, Hall, Hardeman, Haskell, Hockley, Knox, Lamb, Terry, Wheeler, Wilbarger, and Yoakum counties.

(2) *Allocation to counties.* Any quota to be allocated to eligible Texas counties in accordance with paragraph (f)(1) of this section shall be apportioned to the eligible counties on the basis of the total production of additional peanuts in the respective counties for the 1988 crop. Accordingly, based on the production of additional peanuts in 1988, such quota shall be apportioned to eligible counties according to the following factors: Andrews—0.0056, Briscoe—0.0169, Childress—0.0087, Collingsworth—0.1948, Dickens—0.0000, Donley—0.0338, Gaines—0.4367, Hale—0.0007, Hall—0.0666, Hardeman—0.0109, Haskell—0.1451, Hockley—0.0007, Knox—0.0030, Lamb—0.0035, Terry—0.0104, Wheeler—0.0033, Wilbarger—0.0000, and Yoakum—0.0593.

(3) *Exception to allocation to counties.* In that Gaines county is the only county listed in paragraph (f)(1) of this section for which the total of farm basic quotas exceeded 20,000,000 pounds for the 1989 crop of peanuts and the total of farm basic quotas in Gaines County for the 1989 crop was 22,853,615 pounds, if the cumulative increase in the basic quota for Gaines County, as determined in accordance with paragraphs (f)(2) of this section, for the 1991 through 1995 crops exceeds 22,853,615 pounds, the amount in excess of 22,853,615 pounds shall, in accordance with the provisions of the authorizing legislation, be apportioned to the remainder of the counties listed in paragraph (f)(1) of this section on the basis of the total production of additional peanuts in the respective counties for the 1988 crop.

(4) *Determining factor for reallocation of quota*—(i) To receive a share of any quota allocated to eligible Texas counties in accordance with paragraphs (f)(2) of this section, a farm must have had a basic quota greater than zero for the 1990 crop of peanuts. However, if a farm had a basic quota greater than zero in 1990 and such farm is reconstituted subsequent to the 1990 crop, the farm(s) that result from the reconstitution shall not be eligible to receive a share of the quota that is allocated to the county in accordance with paragraph (f)(2) of this section.

(ii) A farm allocation factor shall be determined for each eligible farm as follows:

(A) Using data from the year preceding the year for which the reallocation is being made, determine a factor by dividing the quantity of contract additional peanuts delivered to handlers from the farm by the total remaining peanuts marketed from the farm.

(B) Total all factors determined in accordance with paragraph (f)(4)(ii)(A) of this section.

(C) Except as may be determined by the Deputy Administrator to avoid schemes and devices in contravention of the purposes of this part to avoid inequities, the farm allocation factor shall be determined by dividing the factor determined in accordance with paragraph (f)(4)(ii)(A) of this section by the total determined in accordance with paragraph (f)(4)(ii)(B) of this section.

(5) *Increase in basic quota.* The basic quota otherwise determined for a farm in accordance with the provisions of this section shall be increased by an amount determined by multiplying any quota allocated to the county in accordance with paragraph (f)(2) of this section by the farm allocation factor determined in accordance with paragraph (f)(4)(ii)(C) of this section.

(6) *Quotas for eligible nonquota farms.* Quotas for eligible nonquota farms in any Texas county shall be determined in the same manner as provided for other States in paragraph (e) of this section.

(7) *Allocation of increase in State poundage quota.* Any increase in the State poundage quota for Texas, except for the 33 percent allocated to eligible Texas counties in accordance with paragraph (f)(2) of this section, shall be reallocated to eligible farms in any Texas county, including the counties in paragraph (f)(1) of this section, in accordance with paragraph (b) of this section.

§ 729.205 Tenants sharing in increased quota.

(a) *General.* If the poundage quota allocated to a State is greater than the poundage quota allocated to such State for the preceding year, an eligible tenant who leased a part or all of a farm in any county in such State for the production of peanuts shall share equally with the

farm owner, in accordance with the provisions in this section, in that quantity of basic quota that is allocated, as a result of the tenants production of additional peanuts on the farm during the base period to such farm, from the State's increased poundage quota.

(b) *Eligible tenant.* If a person leased part or all of a farm, and had a 100 percent producer interest in one or more fields of peanuts that were produced on such farm during the base period, and such farm's basic quota is increased as a result of an increase in a State's poundage quota, such person shall be considered as an eligible tenant on such farm and shall share in such increase in the farm's basic quota if such person:

(1) *Qwnership interest.* Does not have any ownership interest in such farm;

(2) *Shared in previous year's production of peanuts.* Shared in the production of any peanuts produced on the farm in the crop year immediately preceding the crop year for which such increase in basic quota is granted;

(3) *Application for share of increase.* Files an application at the county ASCS office of the county in which such farm is located for administrative purposes, by February 15 of the crop year for which such increase in basic quota is granted, for a share of such increase;

(4) *Supporting proof.* Provides supporting proof, that is acceptable to the county committee, of the quantity of additional peanuts produced on such farm by such person during each year of the base period.

(c) *Tenant's share of increase.* An eligible tenant's share of the increase in a farm's basic quota shall be one half of an amount determined by multiplying the quantity of additional peanuts produced by such tenant and for which acceptable proof was provided in accordance with paragraph (b)(4) of this section by the factor determined in accordance with § 729.204(b)(2) of this part.

(d) *Disposition of tenant's share of increase.* (1) *By tenant.* An eligible tenant may dispose of any basic quota determined for such tenant in accordance with paragraph (c) of this section. Such disposition must take place by:

(i) *Time for disposition.* The later of April 1 of the current year or 30 days after the date of notification of the amount of such basic quota.

(ii) *Manner of disposition.* Filing an application at the county ASCS office to transfer such basic quota:

(A) *Farm owned by tenant.* To a farm within the county that is owned by such tenant.

(B) *Sale of quota.* By sale to the owner of any farm within the county in accordance with § 729.212 of this part.

(2) *Allocation to other farms.* Any basic quota determined for an eligible tenant in accordance with paragraph (c) of this section that is not disposed of by such eligible tenant in accordance with paragraph (d)(1) of this section shall, to the extent practicable, be reallocated to other farms within the State in accordance with § 729.204(e) of this part.

(e) *Other provisions.* Any increase in a farm's basic quota that results from a tenant's production of additional peanuts on such farm during the base period shall remain on such farm if the:

(1) Tenant who otherwise might have qualified to receive a share of such increase in basic quota does not file an application for a share of such quota in accordance with paragraph (b) of this section; or

(2) Additional peanuts were produced by a person who was a tenant on such farm only during the beginning year of the base period or the second year of the base period.

§ 729.206 Allocation of quota for experimental and research programs.

(a) *General.* A basic quota shall be established for the 1991 crop for each land-grant institution identified in the Act of May 8, 1914 (38 stat. 372, chapter 79; 7 U.S.C. 341 et seq.), colleges eligible to receive funds under the Act of August 30, 1890 (26 stat. 419 chapter 841; 7 U.S.C. 321 et seq), including Tuskegee Institute and, as appropriate, the Agricultural Research Service of the Department of Agriculture if such institution possessed basic quota for the 1985 crop year or was authorized under this part at that time to market peanuts from the 1985 crop for quota purposes without incurring marketing penalties.

(b) *Amount of allocation.* The amount of quota allocated from the State reserve to an eligible institution shall not exceed the poundage quota allocated to the institution for the 1985 crop year and shall not exceed the quantity of peanuts that was exempted from payment of marketing penalties by such institution for the 1985 crop year, as applicable, except that the total pounds allocated for the 1991 crop to all institutions in the State shall be allocated so as not to exceed one-tenth of one percent of the poundage quota allocated to the State in which the respective institutions are located.

(c) *Limitation.* The quantity of peanuts marketed by such institution by use of the quota granted in accordance with paragraph (b) of this section shall not exceed the quantity needed for experimental and research purposes. The director of each such institution shall be responsible for providing information as needed to determine compliance with this section.

(d) *Quota for 1992 through 1995 crops.* For each institution for which a 1991 basic quota is determined in accordance with this section, a basic quota shall be established for 1992 through 1995 crops in the same manner as for other farms within the State, except that the basic quota shall not be reduced for any nonproduction of the 1989 and 1990 crops of peanuts.

§ 729.207 Tillable cropland limitation.

If any person owns a farm for which the basic quota exceeds an amount determined by multiplying the larger of the farm yield or the highest actual yield for the farm during the base period by the tillable cropland on the farm, the person shall take steps, such as the sale of quota, the purchase of tillable cropland, the permanent transfer of quota, or other similar means that will result in elimination of the excess. If such person fails to take such action, the farm's preliminary quota for the next year, and the basic quota permanently shall be reduced by the amount of the excess.

§ 729.208 Determining a farm's effective quota.

The effective quota for a farm shall be the basic quota adjusted by:

(a) *Upward adjustment.* Adding the:

(1) Effective undermarketings;

(2) Quota temporarily reapportioned to the farm; or

(3) Quota temporarily transferred to the farm by either lease, owner, or operator.

(b) *Downward adjustment.* Subtracting the quota:

(1) Temporarily transferred from the farm by either lease, owner or operator;

(2) Temporarily released; or

(3) Converted in the current year from the production of peanuts in accordance with part 704 of this chapter or similar program as determined by the Deputy Administrator.

§ 729.209 Determination of farm yields.

(a) *Farm yield.*—(1) *Quota farm in previous year.* The farm yield for the current year for a farm that was a quota farm in the previous year shall be the same as the farm yield established for the farm in the previous year.

(2) *Nonquota farm.* If a farm was a nonquota farm in the year preceding the current year and such farm becomes a quota farm in the current year, a farm yield shall be determined by the county committee if a farm yield has not been

established previously for such farm. Such farm yield shall be determined on a fair and reasonable basis by the county committee after considering the farm yields that have been established on other similar farms in the same locality.

(b) *Reconstituted farms.* For reconstituted farms, the farm yield for such farm shall be:

(1) *Combination of quota farms.* For combined quota farms, the weighted average of the farm yields for the tracts being combined.

(2) *Combinations of quota and nonquota farms.* For a combination of a quota and nonquota farm, the farm yield of the tract(s) with an established quota, even though a farm yield had been previously established for such nonquota tract(s).

(3) *Combination of nonquota farms.* For a combination of a nonquota farm, established by the county committee in the same manner as for farms under paragraph (a)(2) of this section, even though a farm yield had been previously established for the individual tracts.

(4) *Divisions.* For tracts resulting from the division of a farm, the same farm for each tract that results from the division as the farm yield for the parent farm, except that should one or more tracts within the divided farm have a previously established farm yield, the farm yield for such tract(s) shall be that previously established for such tract(s).

§ 729.210 Approval of farm yield and farm poundage quota and notice to farm operator.

(a) *Approval.* Each farm yield, basic quota, and effective quota shall be determined under the supervision of, and approved by, the county committee of the county in which the farm is administratively located, subject to the concurrence of the State committee or a representative of the State committee.

(b) *Notice to farm operator.* (1) As soon as practicable after the basic quota or the effective quota is approved, an official notice of such quota shall be mailed to the farm operator.

(2) If the basic quota is reduced to zero for the current year, the county committee shall mail to the farm operator a notice of such determination.

(3) A revised notice of basic quota or effective quota shall be mailed to the farm operator as soon as possible after the county committee determines that an incorrect notice has been mailed, or the county committee takes an action which requires a revision of the previously determined quota.

(4) The notice to the operator shall constitute notice to all persons, including, but not limited to, any person who as operator, landlord, tenant, or sharecropper has an interest in the farm for which the quota is established.

(c) A failure to provide the notice provided for in paragraph (b) of this section shall not entitle any person to a quota to which they are otherwise entitled, unless otherwise provided in this part.

§ 729.211 Erroneous notice of effective farm poundage quota.

(a) *Marketing penalty computations where an erroneous notice has been issued.* If the official notice of effective quota issued for a farm erroneously stated a quota larger than the correct effective quota, the quota shown on the erroneous notice shall serve as the basis for marketing penalty computations for the farm for the current marketing year only if the county committee determines and the State Executive Director concurs that:

(1) The error was not so substantial as to place the operator on notice thereof that such notice of quota was incorrect; and

(2) The operator, relying upon such notice and acting in good faith:

(i) Has made plans to produce the quota set forth on the erroneous notice (for example, land preparation; purchase of seed, fertilizer, and other production materials; or reducing the acreage of other crops), or

(ii) Has planted the acreage of peanuts needed to produce the erroneous farm poundage quota.

(b) *Determination of actual undermarketings where an erroneous notice has been issued.* Notwithstanding the provisions of paragraph (a) of this section, actual undermarketings for farms which receive an erroneous notice of effective quota shall be determined on the basis of the correct effective quota for the farm.

§ 729.212 Transfer of quota by sale, lease, owner, or operator.

Peanut quota may be transferred between eligible farms, or between separately owned tracts within a farm, in accordance with the provisions of this section.

(a) *Basis of transfers.* A transfer of quota may be either permanent or temporary to the extent provided for in this section.

(1) *Permanent.* A permanent transfer shall be based on a part or all of the farm's basic quota. The maximum quota that may be permanently transferred from a farm in the current year is the farm's basic quota. A permanent transfer may be by:

(i) *Sale.* The sale of a farm's basic quota.

(ii) *Owner.* The owner transferring basic quota between two farms when such farms have identical ownership as determined by ASCS under instructions of the Deputy Administrator.

(2) *Temporary.* Except as provided in (e)(1)(iii) of this section, a temporary transfer is for one year and shall be based with respect to the 1991 crop, on a part or all of the farm's basic quota. The maximum quota that may be temporarily transferred from a farm in the current year is the farm's basic quota. A temporary transfer filed after January 31 and before August 1, may to the extent permitted by this section be by:

(i) *Lease.* The lease and transfer of a farm's basic quota.

(ii) *Owner.* The owner transferring basic quota to another farm owned or operated by such owner.

(iii) *Operator.* The operator transferring basic quota to another farm owned or operated by such operator.

(b) *Transfer agreement.* In order to transfer poundage quota in the current year between two eligible farms, the transfer agreement must be:

(1) *Form.* Recorded on Form ASCS–375.

(2) *Where to file.* Filed in the county ASCS office which serves the county in which the transferring farm is located for administrative purposes.

(3) *Signatures.* Agreed upon and signed by:

(i) *Sale or Lease.* In the case of a sale or lease, the owner(s) and operator of the transferring farm and the owner(s) or operator of the receiving farm. However, if a lease is filed after July 31 by a farm operator who cash leased the farm the signature of the owner(s) of such farm is not required.

(ii) *Owner transfer.* In the case of an owner transfer, the owner of the transferring farm who also must be the owner or operator of the receiving farm.

(iii) *Operator transfer.* In the case of an operator transfer, the operator of the transferring farm who also must be the owner or operator of the receiving farm.

(iv) *Lienholder.* In all cases, any person who holds a mortgage or other lien against the transferring farm.

(4) *Witness.* Signed on Form ASCS–375, by each person whose signature is required by paragraphs (b)(3) of this section, in the presence of a State or county committee member or an ASCS employee who shall sign Form ASCS–375 as a witness, except that when both the owner and the operator of a transferring farm must sign, such witness is required for the signature of either the owner or operator, but not both. If such signatures cannot be

witnessed in the county ASCS office where the farm is administratively located, they may be witnessed in any State or county ASCS office convenient to the owner or operator's residence. The requirement that signatures be witnessed for producers that are ill, infirm, reside in distant areas, or are in similar hardship situations or may be unduly inconvenienced may be waived provided the county ASCS office mails Form ASCS–375 for the required signatures.

(5) *When to file.* Filed at any time after all required signatures have been recorded.

(i) *Permanent transfer.* If filed:

(A) Before August 1, the transfer shall be effective for the current year.

(B) After July 31, the transfer agreement shall not be approved until the next year's quota is determined for the transferring farm.

(ii) *Temporary transfer.* If filed after July 31 and before February 1, the transfer agreement shall not be approved unless both the transferring farm and the receiving farm meet applicable provisions in paragraph (e) of this section that apply to transfers filed during such period.

(c) *Location of farms.* In order to transfer poundage quota between two farms, such farms must be administratively located:

(1) *States with small quotas.* With respect to any State for which the State's poundage quota for the year preceding the current year was less than 20,000,000 pounds, anywhere within the State.

(2) *Sale or lease of quota.* In the case of a sale or lease of quota, except as provided in paragraph (c)(1) of this section, within the same county.

(3) *Transfer by owner or operator.* In the case of a transfer by owner or operator, except as provided in paragraph (c)(1) of this section:

(i) Within the same county, or

(ii) Within contiguous counties within the same State if the receiving farm had a basic quota established for the preceding year's crop.

(d) *Transfers to and from the same farm (subleasing)*—

(1) *Transfer agreement filed after January 31 and before August 1.* The county committee shall not approve a transfer agreement which is filed after January 31 of any year and before August 1 of the same year, if the approval would result in a transfer both to and from either the transferring or receiving farm during such period, except that such transfer agreement may be approved if the farm that otherwise would be eligible to transfer or receive such quota resulted from a farm reconstitution that was approved subsequent to a transfer of quota.

(2) *Record of transfer filed after July 31 and before February 1.* The county committee shall not approve a temporary transfer of effective quota if the transfer agreement is filed after July 31 of any year and before February 1 of the following year and approval would result in a temporary transfer both to and from either the receiving farm or transferring farm during such period.

(e) *Other transfer provisions*—(1) *Temporary transfer of quota from a farm.* A temporary transfer of quota from a farm by lease, owner, or operator shall not be approved:

(i) *Effective quota includes reapportioned quota.* If the transfer agreement was filed before August 1 of a crop year and the effective quota for the farm includes temporarily reapportioned quota from quota released from other farms of that crop year.

(ii) *Peanut poundage quota penalty.* If any person whose signature is required to perfect the transfer is known to owe a peanut poundage quota penalty. However, this provision shall not apply if the penalty is paid or, in the case of a transfer by lease, the entire proceeds of the lease are applied to the penalty and the county committee determines that the amount paid for the lease represents a reasonable price for the pounds of quota being leased.

(iii) *Filed after July 31 and before February 1 ("Fall transfers").* If filed after July 31 of the crop year and before February 1 of the following year, unless:

(A) The reported or determined acreage of peanuts in the current year for the transferring farm plus any acreage for which the county committee has approved prevented planted credit for the farm for the current year, when multiplied by the larger of the farm yield or the highest actual yield per acre during the base period equals or exceeds an amount equal to 90 percent of an amount determined by subtracting the effective undermarketings from the farm's effective quota;

(B) The county committee determines that the failure to produce the effective quota less the effective undermarketings was due to conditions beyond the control of the farm operator;

(C) The quantity to be transferred does not exceed the quota balance remaining on the farm's marketing card(s); and

(D) For a lessee, such lessee provides satisfactory evidence that the lease is a cash lease or the owner signs the transfer agreement.

(2) *Temporary transfer of quota to a farm.* A temporary transfer of quota to a farm by lease, owner, or operator shall not be approved:

(i) *Tillable cropland limitation.* If the transfer agreement was filed before August 1 of the crop year and the effective quota after the transfer would exceed an amount determined by multiplying the acreage of tillable cropland on the farm by the larger of the farm yield or the highest actual yield per acre during the base period.

(ii) *Filed after July 31 and before February 1.* If the transfer agreement is filed after July 31 of the crop year and before February 1 of the following year unless the quantity being transferred:

(A) Is needed in order to market all eligible peanuts from the receiving farm as quota peanuts, and

(B) Does not exceed an amount by which the receiving farm's effective quota before the transfer is less than the entire production of peanuts from the farm exclusive of any peanuts that have been graded as Segregation 2 or Segregation 3 peanuts.

(3) *Permanent transfer of quota from a farm.* A permanent transfer of quota from a farm by sale or by owner shall not be approved:

(i) *Permanent transfer of quota to the farm.* If quota was purchased or permanently transferred to the farm by an owner transfer during the base period.

(ii) *Peanut poundage quota penalty.* If the owner is known to owe a peanut poundage quota penalty. However, this provision shall not apply if the penalty is paid, or in the case of a sale of quota, the entire proceeds from the sale of quota are applied to the penalty and the county committee determines that the amount paid for the quota represents a reasonable price for the pounds of quota being sold.

(iii) *Conservation Reserve contract.* If the peanut quota is subject to an approved Conservation Reserve Program contract.

(4) *Permanent transfer of quota to a farm.* A permanent transfer of quota to a farm by sale or by owner shall not be approved if the basic quota after transfer would exceed an amount determined by multiplying the acreage of tillable cropland on the farm by the larger of the farm yield or the highest actual yield per acre during the base period.

(f) *Approval or disapproval of a transfer agreement.* The county committee shall approve or disapprove each transfer agreement. The county committee shall approve each transfer agreement which meets the eligibility conditions as set forth in this section or in this part. However, the county

committee may delegate authority to the county executive director or other county ASCS employee to act on behalf of the county committee and approve a transfer agreement which meets the eligibility conditions as set forth in this section. Such delegation may authorize the approval of any eligible transfer agreement or the delegation of authority may be restrictive as to the type of transfer agreements that may be approved. Only the county committee shall disapprove a transfer agreement.

(1) *Time for determination.* Any approval or disapproval of a transfer agreement should be made within 30 days after the transfer agreement is filed with the county committee unless additional time is required as the result of conditions beyond the control of the county committee. However, if a transfer agreement is filed after July 31 of the crop year that provides for a permanent transfer of poundage quota, the transfer agreement shall not be approved until the next year's quota is determined for the transferring farm.

(2) *Effective date.* An approved transfer agreement shall become effective during the current crop year, except that if an agreement to permanently transfer quota is filed after July 31 of the crop year, such agreement shall become effective for the next crop year.

(g) *Effect of permanent transfer of quota.* In the event of a permanent transfer of a quota, applicable farm data for each year of the base period shall be transferred to the receiving farm from the transferring farm in proportion to the quantity of basic quota which has been transferred from the transferring farm.

(h) *Notice of revised quotas.* A revised notice of farm poundage quota shall be issued for each farm affected by the transfer of farm poundage quota.

(i) *Cancellation of transfer*—(1) A transfer approved on the basis of incorrect information furnished by the parties to the transfer agreement, or approved due to error by the county committee, shall be void and canceled effective as of the date of approval except as may be provided by the Deputy Administrator to accomplish the purposes of this part. The cancellation shall not be effective for the current marketing year if:

(i) The transfer approval was made on the basis of incorrect information unknowingly furnished in good faith by the parties to the transfer agreement or the transfer approval was made in error by the county committee, and

(ii) The parties to the transfer agreement were not notified of the cancellation prior to the marketing of quota peanuts in excess of the revised effective farm poundage quota.

(2) If cancellation of a transfer is required, the county committee shall issue revised notices of poundage quota showing the reasons for, and effect of, the cancellation.

(j) *Withdrawal or minor revision.* The county committee may permit withdrawal or minor revisions of a transfer upon a:

(1) Written request by all parties to the transfer, and

(2) County committee determination that such withdrawal or revision is clearly in the best interest of all the producers and will not impair the effective operation of the peanut program.

(k) *Adjustment of marketings.* For the purpose of computing production history for quota increase based on production, in the case of a temporary transfer by owner or operator, if the current year marketing of peanuts from the receiving farm exceeds such farm's basic quota, such total marketings of the receiving farm shall be reduced by the amount of such excess, to the extent of the quota temporarily transferred to such farm by owner or operator, and such reduced amount shall be added to the current year marketings of the transferring farm.

(l) *Considered produced credit.* Quota that is leased and transferred from a farm shall be considered produced on such farm if neither of the following are applicable:

(1) Part, or all, of the farm's quota was released during any 2 or more years of the base period.

(2) Part, or all, of the farms's quota was leased or transferred to another farm in the same county during any 2 or more years of the base period.

§ 729.213 Release and reapportionment of quota.

(a) *Release.* By filing Form ASCS–278 with the county ASCS office that serves the county in which the farm is located for administrative purposes, part or all of the farm's:

(1) *Temporary release.* Effective quota may be temporarily released to the county committee for the current year.

(2) *Permanent release.* Basic quota may be permanently released to the county committee. If the farm consists of separately identifiable tracts having different ownership, the owner(s) of any tract may permanently release part or all of the basic quota contributed to the farm by such tract.

(b) *Request for released quota.* Permanently released quota shall be reallocated without a request from the farm's owner or operator to eligible farms as determined in accordance with § 729.204 of this part. Temporarily released quota, may be reapportioned to farms for which a request for released quota has been filed, on Form ASCS–278, in the county ASCS office that serves the county in which the farm is located for administrative purposes. Temporarily released quota shall be reapportioned in accordance with the provisions of this section.

(c) *Time for filing.* The final date for filing a release of quota or for requesting reapportionment of temporary released quota shall be:

(1) *Permanent release.* For quota to be permanently released, thirty days after the date of mailing of the notice of the farm's quota.

(2) *Temporary release or request for released quota.* For a temporary release or a request for released quota, the date established by the State committee for the county in which the farm is located for administrative purposes.

(d) *Signature requirement.* The ASCS–278 shall be signed by:

(1) *Temporary releases.* In the case of a temporary release, the farm operator. In addition, if quota was either leased and transferred from the farm, or released from the farm, in more than one year of the base period, the ASCS–278 shall be signed by the farm's owner(s).

(2) *Permanent releases.* In the case of a permanent release, both the owner(s) and operator of the farm.

(e) *Reapportionment of temporarily released quota.*—(1) *Time to reapportion.* The county committee shall reapportion, within 10 days after the final date for temporary release of quota in the county, any quota that will be reapportioned to farms in the county. In addition, if the county committee receives released quota from the State committee, such quota shall be reapportioned within 10 days after receipt of the notice of the availability of the quota.

(2) *Basis of reapportionment.* The county committee:

(i) When reapportioning temporarily released quota, shall give priority to producers on nonquota farms and to producers on farms having basic quotas that are significantly below the average basic quota in the county. Otherwise, the county committee shall reapportion the released quota in amounts determined by the county committee to be fair and reasonable on the basis of:

(A) Experience by the applicant in producing peanuts;

(B) Soil and other physical factors affecting the production of peanuts on the applicant's farm; and

(C) Tillable cropland available for the production of peanuts on the applicant's farm.

(ii) Shall not reapportion released quota to a farm that has transferred quota from the farm in the current year.

(iii) Shall not reapportion quota to a farm to the extent that the farm's effective quota after the reapportionment will exceed an amount determined by multiplying the farm's tillable cropland by the larger of the farm yield or the highest actual yield for peanuts during the base period.

(f) *Release to State committee.* (1) Temporarily released quota that is not reapportioned by the county committee to farms in the county shall be released to the State committee for reallocating to other county committees that have requested additional quota for reapportionment to eligible producers.

(2) Permanently released quota shall be released to the State committee for reallocation to eligible farms in accordance with § 729.204 of this part.

(g) *Considered produced credit.* Quota that is temporarily released shall be considered produced on the releasing farm if neither of the following are applicable:

(1) Part, or all, of the farm's quota was released during any 2 or more years of the base period, or

(2) Part, or all, of the farm's quota was leased and transferred to another farm in the same county during any 2 or more years of the base period.

(h) *Withdrawal or minor revision of released quota.* A withdrawal or minor revision in the pounds temporarily or permanently released may be approved upon a written request filed with the county committee if, at the time the request is filed, the county committee has not transmitted permanently released quota to the State committee or, with respect to temporarily released quota, has not reapportioned such released quota to farms in the county or released such quota to the State committee for reallocation to requesting county committees.

Subpart C—Marketing Cards, Marketings, Penalties, and Assessments

§ 729.301 Issuance of cards.

(a) *General.* As used in this part, peanut marketing card, Form ASCS–1002, means a paper marketing card on which data is manually recorded or a plastic marketing card in which data is recorded electronically into a micro computer chip by a computer.

(b) *Issuance of marketing cards.* A marketing card shall be issued in the name of the farm operator for each farm on which peanuts are produced in the United States in the current year for use by each producer on the farm for marketing such producer's share of the peanuts produced except that:

(1) A marketing card issued for experimental peanuts shall be issued in the name of the experiment station, and

(2) A marketing card issued to a successor-in-interest shall be issued in the name of the successor-in-interest.

(c) *Issuance of producer identification cards.* A producer identification card shall be issued in the same name that is entered on the marketing card(s) for each eligible farm. The producer identification card will be used to identify the farm on which the peanuts were produced and the card must accompany each lot of peanuts when offered for sale. Producer identification cards shall be issued at the time the marketing cards are issued.

(d) *Person authorized to issue cards.* The county executive director shall be responsible for the issuance of marketing cards and producer identification cards.

(e) *Rights of producers and successors-in-interest.* (1) Each producer having a share in the peanuts available for marketing from a farm shall be entitled to the use of the marketing and identification cards for marketing such producer's proportionate share of the peanuts produced on the farm, as determined by the county committee.

(2) Any person who the county committee determines has succeeded, in whole or in part, to the share of a producer in the peanuts available for marketing from a farm shall, to the extent of such succession, have the same rights to the use of the marketing and identification cards and bear the same liability for penalties as the original producer would with respect to the disposition of the peanuts.

(f) *Data on marketing card and supplemental card*—(1) Before issuance, the following data and information must be recorded on the marketing card:

(i) The name of each producer and the producer's share of the crop of peanuts;

(ii) The effective farm poundage quota;

(iii) The pounds of any additional peanuts contracted and the handler number of the contracting handler;

(iv) The converted penalty rate, if applicable;

(v) The name of any producer on the farm against whom a peanut poundage quota lien has been established and the unpaid balance of such lien;

(vi) The name of any producer on the farm against whom a U.S. claim has been established and the unpaid amount of such claim;

(vii) With respect to any farm with a producer that is ineligible for price support, an indication of such ineligibility; and

(viii) An indication that the peanuts marketed from the farm are "Eligible for Buyback" if the farm operator authorizes the handler to purchase peanuts under the "Immediate Buyback" purchase in accordance with part 1446 of this title.

(2) A supplemental marketing card bearing the same name identification as shown on the original marketing card may be issued for a farm if an original or supplemental marketing card is returned to the county office. The balance of the poundage quota for the farm from the returned marketing card shall be recorded as the effective farm poundage quota on the supplemental card.

(3) Two or more marketing cards may be issued for a farm if the farm operator specifies in writing the amount of the effective quota (not to exceed the balance of effective quota available) which is to be assigned to each card.

(g) *Issuance of producer identification cards*—(1) Before issuance, the following information shall be recorded on the producer identification card:

(i) Name and address of the farm operator, and

(ii) State, county code, and farm serial number.

(2) A farm operator may receive as many identification cards as may be needed at any one time to accompany each lot of peanuts until such lot of peanuts has been marketed.

(h) *Replacing a lost, stolen, or destroyed marketing card.* A new marketing card shall be issued to replace a card which has been determined by the county executive director who issued the card to have been lost, destroyed, or stolen, if the farm operator gives immediate written notice of such fact to the appropriate county ASCS office and furnishes a satisfactory report of the quantity of peanuts which was marketed by use of such marketing card before such card was lost, stolen, or destroyed.

(i) *Invalid cards.* A marketing card shall be invalid under any one of the following conditions:

(1) It is not issued or delivered in the form and manner prescribed.

(2) Any entry is omitted or is incorrect.

(3) It is lost, destroyed, or stolen.

(4) An alteration has been made without the approval of the county executive director.

(5) For a paper card, the card becomes illegible.

(j) *Validating invalid cards.* If a marketing card is known to be invalid, the farm operator or other producer shall return the marketing card to the county office. The county executive director shall issue a replacement marketing card or the marketing card may be made valid by entering data previously omitted or by correcting any incorrect data previously entered.

§ 729.302 Identification of producer marketings.

The producer must identify each lot of peanuts offered for marketing through a handler by furnishing to the handler the farm operator identification card ASCS–1003, and the peanut marketing card ASCS–1002, which was issued for the farm on which the peanuts were produced. The producer may at the producer's risk leave the peanut marketing card in the custody of the handler during the period between marketing lots of peanuts to the same handler; however, the marketing card shall not be left in the possession of the handler after the producer has completed marketings for the season.

§ 729.303 Designation of category for marketing peanuts.

Any marketings of peanuts which are not inspected by the Federal-State Inspection Service prior to marketing shall be deemed to be a marketing of quota peanuts. If a lot of peanuts is inspected by the Federal-State Inspection Service, the producer shall designate to the handler whether the lot of peanuts is to be marketed as quota loan, quota commercial, loan additional, or contract additional peanuts as defined in part 1446 of this title. The designation must be made within the time allowed by the handler but not later than the close of inspection of the third workday (excluding Saturday, Sunday, or legal holiday) after the peanuts are inspected and graded. In the absence of a designation, any Segregation 1 peanuts shall be marketed and deemed to be marketed in the following order of priority:

(a) As quota loan or quota commercial peanuts, at the option of the buying point operator, to the extent of the unused poundage quota on the peanut marketing card which is used to identify the peanuts for marketing;

(b) As contract additional peanuts to the extent of the unused contract poundage balance on the peanut marketing card which is used to identify the peanuts for marketing if the peanuts are being marketed through the contracting handler; or

(c) As loan additional peanuts.

§ 729.304 Marketing card entries.

(a) Immediately after each lot of peanuts is marketed the buyer, or the buyer's representative, shall make the following entries on the marketing card from the ASCS–1007:

(1) The ASCS–1007 serial number which identifies the lot of peanuts;

(2) The net pounds marketed;

(3) The unused poundage quota balance remaining after the marketing;

(4) The unused contract additional poundage balance remaining after the marketing;

(5) The handler's number, or for loan peanuts, the association number;

(6) The buying point number;

(7) The type of peanuts marketed; and

(8) Any penalties or claims collected.

(b) If noninspected peanuts are purchased at a buying point, the buyer, or the buyer's representative, shall make the following entries on the paper marketing card from the ASCS–1030, Report of Purchase of Noninspected Peanuts;

(1) The date of marketing;

(2) The pounds purchased;

(3) The unused poundage quota balance remaining after the marketing;

(4) The unused contract additional poundage balance remaining after the marketing;

(5) The handler's number;

(6) The type of peanuts marketed; and

(7) Any penalties or claims collected.

§ 729.305 Peanuts on which penalties are due and refund of excess penalty collected.

(a) In addition to other remedies as may apply, a penalty is due from the person involved in a violation of this part and shall be assessed against such person at the basic penalty rate on:

(1) The quantity of peanuts which is marketed or considered to be marketed from a farm for domestic edible use in excess of the effective farm poundage quota for the farm.

(2) All peanuts produced on a farm for which the producer:

(i) Failed to report the peanut acreage as provided in accordance with part 718 of this chapter; or

(ii) Is responsible, if entry on the farm to authorized representatives of the Secretary for the purpose of determining the acreage of peanuts on the farm is refused or denied.

(3) The quantity of peanuts falsely identified, as determined by the county committee with the concurrence of the State committee. The quantity of peanuts subject to penalty under this provision shall be the quantity of peanuts determined by the county committee to have been falsely identified. Acts considered to be false identification shall include the following:

(i) Identifying or permitting the identification of peanuts at time of marketing as having been produced on a farm other than the farm of actual production;

(ii) Marketing or permitting the marketing of peanuts to a registered handler without identifying the peanuts with a peanut marketing card issued for the farm on which such peanuts were produced;

(iii) Permitting the use of the peanut marketing card for the farm to record a marketing of peanuts when, in fact, peanuts were not marketed from the farm; or

(iv) Marketing peanuts that have been commingled with those of another farm.

(4) All peanuts, the disposition of which the producer has failed to account for to the satisfaction of the county committee. The quantity of peanuts subject to penalty under this provision shall be the amount of peanuts determined by the county committee to have been marketed or considered marketed from the farm in excess of the quantity for which the producer has satisfactorily accounted.

(5) All additional peanuts marketed as contract additional peanuts in excess of the pounds contracted between the producer and handler as provided in Part 1446 of this title.

(6) The quantity of farmers stock peanuts the county committee determines was necessary to plant the reported acreage for the crop year if the producer fails or refuses to file an accurate seed peanut report of seed purchases; and

(7) All peanuts marketed in violation of this subpart for reasons not otherwise enumerated in paragraph (a) of this section.

(b) If the reported acreage of peanuts on a farm differs from the determined acreage by more than the tolerance provided in Part 718 of this chapter, a penalty at the converted rate shall be due from all producers on the farm on all peanuts marketed from the farm.

(c) Any penalty collected in excess of the correct amount as determined pursuant to this section may be refunded upon a finding by the county committee that an excess amount was collected.

§ 729.306 Farms with one acre or less of peanuts.

All peanuts produced on a farm on which the acreage of peanuts is one acre or less may be marketed for domestic edible use without incurring a marketing penalty if the producer who shares in

the peanuts produced on any such farm does not share in the peanuts produced on any other farm.

§ 729.307 Assessment of penalties; joint and several liability.

Any person against whom a penalty is assessed in accordance with this subpart, shall be notified of the penalty assessment in writing by the appropriate county committee. Such notice shall state the amount of the penalty and the basis upon which the penalty is being assessed. The notice shall also state that the person against whom the penalty is being assessed may request reconsideration of the assessment of the penalty in accordance with Part 780 of this chapter. If more than one person is liable for a penalty, the liability of all persons involved shall be joint and several liability.

§ 729.308 Lien for penalty.

(a) *Lien on peanuts.* Until the amount of any penalty provided by this part is paid, a lien on the crop of peanuts with respect to which such penalty is incurred, and on any subsequent crops of peanuts subject to poundage quotas in which the person liable for payment of the penalty has an interest, shall be in effect in favor of the United States.

(b) *Lien precedence.* The lien on the peanuts takes precedence over all claims and attaches at the time the debt is entered on a county claim record in the county ASCS office for the county in which the subsequent crop is grown.

(c) *List of peanut marketing penalty debts.* Each county ASCS office shall maintain a list of peanut marketing penalties for which a claim has been established and recorded in such office. The list shall be made available for examination upon written request by any interested person.

§ 729.309 Persons to pay penalty or collect debts.

(a) *Marketings to handlers.* The buyer shall be liable for the full penalty due on marketings of excess quota peanuts that such handler buys or otherwise acquires from a producer. Also, the buyer shall be liable with the producer for the full penalty due on peanuts purchased from a producer as additional peanuts in excess of the amount contracted with the producer as contract additional peanuts in accordance with part 1446 of this title. The buyer may deduct the penalty from the price paid to the producer for the peanuts. If the net value of a lot of peanuts is less than the penalty due on such lot, or if the handler fails to collect the penalty due on any marketing of a lot of peanuts from a farm, the buyer and each of the producers on the farm shall be held jointly and severally liable for the amount of any unpaid penalty due on such lot of peanuts.

(b) *Other marketings.* The producer is liable for the penalty due on any marketings of excess quota peanuts to persons who are not established peanut buyers.

(c) *Penalty for error on marketing card.* The producer and the buyer are jointly and severally liable for any penalties which may be due if the buyer made an error or failed to properly record the pounds of peanuts marketed on the producer's marketing card and such error resulted in marketings in excess of the effective poundage quota or the pounds contracted as additional peanuts in accordance with part 1446 of this title.

(d) *Notice to affected parties.* All affected parties shall be deemed to be on notice that penalties are due when the marketings of peanuts for domestic edible use exceed the effective poundage quota indicated on the marketing card or the marketing of peanuts as contract additional peanuts exceeds the amount contracted by the producer as additional peanuts in accordance with part 1446 of this title. In addition:

(1) *PPQ lien.* If a peanut poundage quota (PPQ) lien is recorded on a claim record maintained in a county ASCS office in accordance with § 729.308 of this part or recorded on the peanut marketing card such recordation shall constitute notice to any peanut buyer that until the amount of the penalty involved plus accrued interest is paid, the United States has a lien on any peanuts, from any crop year that are subject to farm poundage quotas in which the person liable for payment of the penalty has an interest. Peanut poundage quota (PPQ) lien amounts shall be collected by the buyer and paid to the Agricultural Stabilization and Conservation Service prior to making collection for any other liens or claims, except for a lien that was perfected before the PPQ lien became attached, as provided in § 729.308 of this part. Such buyer shall be liable for payment of such amount that was, or should have been, collected by the buyer.

(2) *U.S. claim.* If a U.S. claim, other than for a PPQ lien, is recorded on a marketing card, such recordation shall constitute notice to any peanut buyer that, to the extent of the indebtedness shown, and subject to prior liens, the net proceeds from any price support loan due the debtor must be withheld from the producer and paid to the Agricultural Stabilization and Conservation Service. Such buyer shall be liable for payment of such amount that was, or should have been, withheld.

(3) *Converted penalty rate.* If a converted penalty rate is entered on the marketing card by the county ASCS office, the buyer shall collect penalty at such converted penalty rate on each pound of peanuts acquired from the producers of the peanuts. Any penalty that is collected must be paid to the Agricultural Stabilization and Conservation Service. Such buyer shall be liable for payment of such amount that was, or should have been, collected by the buyer.

§ 729.310 Payment of penalty or other debt.

(a) *Method of payment.* A draft, money order, or check made payable to the Agricultural Stabilization and Conservation Service may be used to pay any penalty, other indebtedness collected in accordance with this subpart, or interest thereon. All methods of payment shall be received subject to collection and payment at face value.

(b) *Due date.* The penalty becomes due on the date of marketing, or in the case of false identification or failure to account for the disposition of peanuts, the date the producer is notified of the false identification or the failure to account, as applicable.

(c) *Interest.* The person liable for payment or collection of the penalty shall be liable also for interest thereon at the rate of interest charged CCC for its borrowings by the United States Treasury on the date such penalty became due. If the rate charged CCC by the Treasury is increased, the interest due on the penalty may be, to the extent permitted by law, increased commensurately for the period of such increase. Interest shall accrue from the date the penalty was due if the penalty is not remitted within 30 days after the date the penalty was assessed. Nothing in paragraph (c) of this section, shall limit the liability of a person for pre-penalty interest where otherwise provided for in this part or otherwise provided for by law.

§ 729.311 Peanuts on which penalties are not to be assessed.

Notwithstanding other provisions in this subpart:

(a) *Error in weight.* A penalty shall not be collected if such penalty results from an error in net weight of a lot of peanuts marketed, as reported on Form ASCS–1007, Inspection Certificate and Sales Memorandum, and the error does not exceed one-tenth of one percent of the correct net weight of such lot of peanuts. However, notwithstanding the

preceding sentence, in the case of fraud or conspiracy, a penalty shall be due for any error in the net weight, regardless of the size or amount of the error.

(b) *Peanuts grown on State prison farms.* A penalty shall not be collected on peanuts grown on State prison farms for consumption within such State prison system, and so consumed.

(c) *Peanuts grown for experimental or research purposes.* (1) A penalty shall not be collected on the marketing of any peanuts that are:

(i) Grown only for experimental or research purposes, which shall include seed determined by the Deputy Administrator to be breeder or foundation seed;

(ii) Grown on land owned or leased by a publicly-owned agricultural experiment station, which shall include a State-operated seed organization;

(iii) Produced at public expense by employees of entities described in paragraph (c)(1)(ii) of this section, or are produced by farmers for seed determined by the Deputy Administrator to be breeder or foundation seed peanuts for experimental or research purposes pursuant to an agreement with a publicly-owned agricultural experiment station, which shall include such State-operated seed organizations.

(2) The exemption from penalty, as provided in paragraph (c)(1) of this section shall not apply unless:

(i) Such peanuts are used for purposes other than for:

(A) Food or feed, or

(B) Seed to produce peanuts for food.

(ii) The director of the applicable publicly-owned agricultural experiment station, including State-operated seed organizations, furnishes to the State ASCS Executive Director:

(A) A list, by county, showing for each farm on which such peanuts are grown for experimental or research purposes, the name and address of the entity that supplies information; the name of the owner, and operator, if different from the owner, of the farm on which such peanuts are grown; and the acreage of peanuts grown for such experimental or research purposes;

(B) A signed statement that such acreage of peanuts will be grown for experimental and research purposes including breeder and foundation seed; such production of peanuts is necessary for the State-operated program conducted for such purposes by the entity; and such peanuts will be produced under the direction of representatives of such entity; and

(C) Such additional reports, if any, as the Deputy Administrator may require.

(d) *Unique strains used to plant green peanut acreage.* Seed peanuts used to plant peanuts for use as green peanuts shall not be subject to penalty if the county committee determines that such seed peanuts:

(1) Are unique strains of peanuts used for green peanuts.

(2) Are not commercially available, and,

(3) Are used exclusively to plant peanuts for harvest as green peanuts.

§ 729.312 Reduction or waiver of penalty.

(a) *Reduction or waiver of penalty.* The county committee may reduce or waive any penalty required to be assessed by this subpart in cases in which the county committee, with concurrence of the State committee, determines that the violations upon which the penalties were based were unintentional or without knowledge on the part of the parties concerned.

(b) *Time of reduction or waiver.* A penalty may be reduced or waived by an authorized official or committee either before or after it has been formally assessed. If the reduction or waiver is made before formal assessment, the notice of assessment shall state the amount of reduction or waiver and the basis upon which the reduction or waiver was made.

(c) *Reconsideration or appeal.* Any person against whom a penalty is assessed under this subpart may, through a request for reconsideration or through an appeal, as applicable, request that the penalty be reduced or waived.

§ 729.313 Failure to comply with program.

Any person who has failed to comply with the provisions in this part because such person was misinformed or relied on the advice of an authorized representative of the Secretary in rendering performance under this part, and such person believed in good faith that such misinformation or advice met the requirements of the program as set forth in these regulations, may file a request with the State committee for review of an adverse county committee ruling with respect to such failure to comply. After review of the case, the State committee shall submit the case to the Deputy Administrator with its recommendation. The Deputy Administrator may grant relief as deemed appropriate in such case. This authority, however, does not extend to cases where such person knew or had sufficient reason to know that the action or advice of the representative of the Secretary upon which the person relied was improper or erroneous, or where the adverse action is based on changes made in the statutory authority of the program or changes in regulations issued for the program.

§ 729.314 Schemes and devices.

(a) Penalties shall be assessed in such manner as will correct for and nullify any action in which a person has knowingly, whether passively or actively:

(1) Engaged in, acquiesced in, or adopted any scheme or device which tends to defeat the purpose of the regulations in this part,

(2) Made any fraudulent representation, or

(3) Misrepresented any fact affecting a program determination.

(b) Such penalties as are provided for in this part shall be in addition to all other remedies and sanctions provided for, or permitted, by law.

§ 729.315 Handling Segregation 3 peanuts.

(a) *Disposition of Segregation 3 peanuts.* Any producer who has a lot of farmers stock peanuts classified by the inspector as Segregation 3 peanuts shall retain such lot of peanuts for seed in accordance with paragraph (c) of this section or shall deliver such lot of peanuts:

(1) To the area association for a price support loan subject to such conditions as apply to eligibility for such loans including those in part 1446 of this title.

(2) As contract additional peanuts subject to provisions of part 1446 of this title;

(3) As quota peanuts, subject to the conditions set forth in this part to a handler who has signed the peanut marketing agreement provided the peanuts were produced for seed under an agreement with a State agency; or

(4) To a handler as quota peanuts if:

(i) The peanuts were produced for seed under an agreement with a State agency.

(ii) The handler to whom the peanuts are sold has, for that purpose, signed a supervision supplement to a warehousing contract with the area marketing association.

(b) *Failure to properly dispose of Segregation 3 peanuts*—(1) *Loss of price support.* If the producer does not, within the time allowed in this part for designation of the category for marketing such peanuts, dispose of Segregation 3 peanuts in the manner specified in this section, such producer shall be ineligible for continued quota price support for the remainder of the marketing year.

(2) *Liquidated damages.* Any peanut producer participating in the price support loan program shall be deemed to have agreed that:

(i) CCC will incur serious and substantial damage to its program to support the price of peanuts if Segregation 3 peanuts are disposed of other than in the manner prescribed by this subpart or by the CCC;

(ii) The amount of such damages will be difficult, it not impossible, to ascertain;

(iii) With respect to any lot of peanuts which is pledged as collateral for a quota price support loan but which is ineligible for such loan, or any lot of peanuts which is pledged as collateral for a quota price support loan by a producer after the producer has disposed of any lot of Segregation 3 peanuts in any manner other than in the manner prescribed in this section, liquidated damages shall be due to CCC, not as a penalty, based on the difference between the quota loan rate and the additional loan rate (on a per pound basis) per net pound of such peanuts,

(iv) Such liquidated damages are a reasonable estimate of the probable actual damages which CCC would suffer because of such action by the producer; and,

(v) This remedy shall be in addition to any other remedy or sanction available against the producer, including penalties under this part.

(c) *Retention of Segregation 3 peanuts for seed.* If the producer elects to retain a lot of Segregation 3 peanuts for seed, the buying point operator shall give a copy of the ASCS–1007 to the producer as a record showing the quantity and quality factors of the peanuts. The producer:

(1) Shall designate such peanuts as quota peanuts.

(2) Shall have the net weight of such peanuts determined and deducted from the farm marketing card.

(3) Shall advise the inspector that the peanuts are being retained for seed.

(4) Must store such peanuts separate from other peanuts on the farm.

(5) Shall notify the county executive director when such peanuts are used and otherwise account for the disposition of such peanuts.

(6) Shall not sell such peanuts to a handler for seed; however, the peanuts may be sold to another producer for seed.

(7) May, if it is later determined that such peanuts are unfit for seed use and after receiving prior approval from the county office, sell such peanuts as quota peanuts for crushing without benefit of price support.

§ 729.316 Marketing assessments.

(a) *General.* A nonrefundable marketing assessment shall be due on each pound of farmers stock peanuts marketed or considered marketed by a producer, or marketed from loan stocks by CCC or the association. The assessment shall be an amount equal to one percent of the national average:

(1) Quota support rate per pound, for the applicable crop year, if such peanuts are marketed as quota peanuts.

(2) Additional support rate per pound, for the applicable crop year, if such peanuts are marketed as additional peanuts.

(b) *Collections and payment of marketing assessments.* (1) Any person who must register as a handler in accordance with Part 1446 of this title and who acquires peanuts directly from a producer shall pay a marketing assessment equal to an amount determined by multiplying the net weight of the farmers stock peanuts acquired from such producer by the applicable amount provided in paragraph (a) of this section. Such person may collect one-half of such marketing assessment from the proceeds that otherwise would be due to such producer, before any other deduction, for the quantity of peanuts acquired.

(2) The producer shall pay a marketing assessment equal to an amount determined by multiplying the amount provided in paragraph (a)(1) of this section by the gross weight of uninspected farmers stock peanuts, or if inspected, the net weight of such peanuts retained on the farm for seed or other uses or marketed by such producers to any person outside the United States or marketed in private marketings through a retail or wholesale outlet to any person who is not required to register as a handler in accordance with Part 1446 of this title. If such peanuts are shelled before they are marketed, the quantity marketed shall be converted to a farmers stock basis, as provided in this part, for purposes of determining the amount of assessment that is due.

(3) With respect to peanuts that are pledged as collateral for a price support loan through an approved warehouse, an assessment, determined by multiplying the net weight of such peanuts by one half of the applicable amount provided in paragraph (a) of this section, shall be:

(i) Deducted from the loan value of such peanuts before other deductions may be made for any other reason.

(ii) Paid by the person who acquires such peanuts from the applicable association or from the Commodity Credit Corporation.

(c) *Remittance of marketing assessments.* With respect to marketing assessments as provided in:

(1) Paragraph (b)(1) of this section, such assessments shall be remitted in a manner prescribed by the Deputy Administrator. In order to avoid a penalty, as prescribed in this section, the marketing assessment with respect to any lot of peanuts acquired directly from a producer must be remitted during the 5 days that follow the week in which the data from the applicable form ASCS–1007 is transmitted to ASCS in accordance with the provisions in Part 1446 of this title. For purposes of this section a week shall be the 168 hour period that begins at 12:01 a.m. local time on any Sunday and the postmark on the envelope in which such marketing assessment is remitted shall be the basis for determining whether the marketing assessment was remitted timely.

(2) Paragraph (b)(2) of this section, such assessments shall be remitted, within 7 days after the date such peanuts are marketed, to the county ASCS office that serves the county in which the farm is administratively located. Peanuts that are retained on the farm for seed or other use, shall be considered marketed at the time the certification of marketings is filed at the county ASCS office.

(3) Paragraph (b)(3)(i) of this section, such assessments shall be credited by the association to the appropriate account of the Commodity Credit Corporation and in accordance with instructions issued by the Executive Vice President, CCC.

(4) Paragraph (b)(3)(ii) of this section, such assessment shall be paid at the time and in the manner prescribed in the applicable:

(i) Sales announcements for sales of farmers stock peanuts by CCC, or

(ii) Sales announcement or other similar document issued by the association for association sales of loan stocks of farmers stock peanuts, or

(iii) Storage contract for farmers stock peanuts purchased by a handler in accordance with the "immediate buyback" provisions of Part 1446 of this title.

(d) *Penalties.* If any person fails to collect, pay or timely remit the assessment required by this section, the person shall be subject to penalty determined by multiplying the quantity of peanuts involved by 10 percent of the national average quota support rate for the applicable crop year.

Subpart D—Recordkeeping and Reporting Requirements

§ 729.401 Peanuts marketed to persons who are not registered handlers.

(a) If peanuts are marketed to persons other than registered peanut handlers, the operator of the farm on which the peanuts were produced shall file a report of the marketings by executing Form ASCS–1011, Report of Acreage and Marketing of Peanuts to Nonestablished Buyers. The ASCS–1011 must be mailed or delivered to the county executive director of the county in which the farm is administratively located within 15 days after the marketing of peanuts from the farm has been completed. If peanuts are marketed by the producer in small lots directly to consumers, such as in the case of local street sales, a daily or weekly summary of the quantity marketed and the place of marketing may be reported in lieu of the name and address of each buyer.

(b) Failure to file an ASCS–1011 as required or the filing of a report which the county committee finds to be incomplete or inaccurate shall constitute failure to account for the disposition of the peanuts on the farm and may result in the assessment of marketing penalties, as provided in this part.

(c) All peanuts marketed to persons other than registered handlers shall be considered as marketings of quota peanuts.

§ 729.402 Report on marketing card.

The farm operator shall return each peanut marketing card to the issuing county ASCS office as soon as marketings from the farm are completed or at such earlier time as the county executive director may request. At the time the last marketing card for a farm is returned, the farm operator shall execute a certification of the pounds of peanuts retained for seed or other use. Failure to return a marketing card or failure to execute the certification of the quantity of peanuts retained for seed or other uses shall constitute failure to account for the disposition of peanuts marketed from the farm. Marketing penalties may be assessed for such failure as provided in this part, unless a satisfactory report of disposition is furnished to the county committee.

§ 729.403 Report of marketing green peanuts.

(a) *Farm operator report.* The operator of each farm from which green peanuts are marketed shall report the marketing of green peanuts. The operator shall make the report by filing Form ASCS–1011 at the ASCS office of the county in which the farm is administratively located. The report shall show for the farm:

(1) The acreage on the farm from which peanuts were marketed solely as green peanuts; and

(2) The name and address of the buyer to, or through whom, each lot of green peanuts was marketed and the quantity in each lot marketed and the date marketed. However, if green peanuts are marketed by the producer in small lots directly to consumers, such as in the case of local street sales, the report may be made as either a daily or weekly summary of the quantity so marketed and the place of marketing may be reported in lieu of the name and address of each buyer.

(b) *Buyer report.* Each buyer of green peanuts shall report purchases of green peanuts from producers on ASCS–1011 to the county ASCS office in the county in which the farm is administratively located. Small lot purchases not in commercial quantities including, but not limited to, street sales, local market sales, and grocery store sales shall not be subject to this reporting requirement. This report shall subject the buyer to a review of those purchase and sales records as required in this part. Each buyer shall keep records of green peanuts purchased including the following information:

(1) Date of purchase;

(2) Name and address of producer selling green peanuts;

(3) Name and address of farm operator and farm number (including State and county codes) of the farm on which the green peanuts were produced; and

(4) Pounds of green peanuts purchased.

(c) *Failure to file green peanut report.* Failure to file any report of the marketing of green peanuts as required by this section or the filing of a report which the county committee finds to be incomplete or inaccurate shall, subject the farm operator or buyer, as applicable, to marketing penalties as set forth in this part.

§ 729.404 Report of acquisition of seed peanuts.

(a) If peanuts are planted on a farm in the current year and the seed peanuts were acquired by purchase or gift, the farm operator shall file a report with the county ASCS office of the acquisition of the seed peanuts. The report must be filed by the farm operator at the time a report of planted acreage of peanuts is made in accordance with provisions of part 718 of this chapter. The report shall include:

(1) The name and address of the handler or person from whom peanuts were purchased or obtained as a gift for the purpose of planting the peanut acreage on the farm in the current year;

(2) The pounds of peanuts acquired for seed;

(3) The basis (farmers stock or shelled) of determining the quantity acquired;

(4) The type of peanuts acquired; and

(5) The date of acquisition.

(b) Unique strains of peanuts that are not commercially available and are retained on a farm to plant green peanuts shall also be reported to the county ASCS office.

§ 729.405 Report of production and disposition.

(a) In addition to any other reports which may be required under this subpart, the farm operator or any producer on the farm shall furnish, upon written request by certified mail from the State Executive Director, a report to the State committee of production and disposition of the peanuts grown on the farm. The report must be filed on ASCS–1010, Report of Production and Disposition, within 15 days after the request is mailed. The report shall show the:

(1) Final acreage of peanuts on the farm;

(2) Total production of peanuts on the farm;

(3) Name and address of the buyer to or through whom each lot of peanuts was marketed, the number of pounds in each lot, and the date marketed:

(4) Quantity and disposition of peanuts not marketed; and

(5) Type of peanuts.

(b) Notwithstanding paragraph (a) of this section, if peanuts are marketed in small lots to persons who are not established buyers, the report otherwise required in paragraph (a) of this section, may be made as either a daily or weekly summary of the number of pounds marketed and the place of marketing may be reported in lieu of the name and address of each buyer.

(c) Failure to file the ASCS–1010 as requested or the filing of an ASCS–1010 which is found by the State committee to be incomplete, incorrect, or in violation of the requirements of paragraphs (a) or (b) of this section, shall constitute failure of the producer to account for the production and disposition of peanuts produced on the farm and will subject the producer to marketing penalties as set forth in this part.

§ 729.406 Persons engaged in more than one business.

Any person who is required under this subpart to keep any record or make any report as a buyer, processor, or other person engaged in the business of shelling or crushing peanuts, and who is engaged in more than one such business, shall keep such records for each such business.

§ 729.407 Penalty for failure to keep records and make reports.

Any person, who dries farmers stock peanuts by artificial means for a producer, any buyer, warehouseman, processor, common carrier of peanuts, any broker or dealer in peanuts, any agency marketing peanuts for a buyer or dealer, any peanut growers' cooperative association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts, or manufacturing peanut products, or any person owning or operating a peanut combine, or any farmer engaged in the production of peanuts, who fails to make any report or keep any record, including electronic records, as required under this part or who makes any false report or record shall be deemed to have improperly handled peanuts for the quantity of peanuts to which such failure applies for which a penalty may be assessed under the provisions of this part or part 1446 of this title, as applicable. Such liability is in addition to criminal penalties or other remedies permitted by law.

§ 729.408 Examination of records and reports.

The Deputy Administrator, the Director of the Tobacco and Peanuts Division, the ASCS State Executive Director, or their designees, and all auditors and agents of the Office of Inspector General, United States Department of Agriculture (USDA) or the General Accounting Office are authorized to examine any records of any producer, or handler, or person buying or processing peanuts as deemed necessary to enforce the peanut poundage quota program and shall be allowed access to such records. Upon a request for such examination, any person who dries farmers stock peanuts by artificial means for a producer, any buyer, warehouseman, processor, or common carrier of peanuts, any broker or dealer in peanuts, any farmer engaged in the production of peanuts, any agent marketing peanuts for a producer or acquiring peanuts for a buyer or association, any person engaged in the business of cleaning, shelling, crushing, or salting peanuts or manufacturing peanut products, or any person owning or operating a peanut combine, shall make available for examination such books, papers, automated records, electronic records, accounts, correspondence, contracts, documents, and memoranda as are under the control of the person receiving the request which any person hereby authorized to examine records has reason to believe are relevant to any matter which relates to the provisions of this part. Any person who fails to provide such access shall be subject to a penalty payable to CCC in amount up to, as determined by the Deputy Administrator, the amount calculated by multiplying the amount of peanuts involved by the quota support rate for the applicable crop year.

§ 729.409 Length of time records and reports are to be kept.

Records required to be kept and copies of the reports required to be made by any person under this subpart shall be on a marketing year basis and shall be retained for a period of 3 years after the end of the marketing year. Records shall be kept for such longer periods of time as may be required in writing by the State Executive Director, or the Director of the Tobacco and Peanuts Division.

Signed at Washington, DC on April 15, 1991.

Keith D. Bjerke,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 91-9148 Filed 4-16-91; 3:35 pm]
BILLING CODE 3410-05-M

Commodity Credit Corporation

7 CFR Part 1446

Peanuts

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule sets forth regulations for the 1991 through 1995 crops of peanuts with respect to price support loans for warehouse stored peanuts, the terms and conditions governing the contracting of additional peanuts for export or crushing, handler recordkeeping and reporting requirements, and penalties. These regulations are necessary for the administration of the price support and poundage quota programs for peanuts. The peanut program is conducted in accordance with the provisions of the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended.

The interim regulations address: (1) the obligation for disposing of peanuts purchased as contract additional peanuts by handlers; (2) the shrink allowance for determining the disposition obligation for contract additional peanuts; (3) disposition credit for contract additional peanuts for manufacturers who export, to an eligible country, peanut products made from quota peanuts; (4) the contract form for use in contracting additional peanuts for either export or crushing; (5) the extension of the final date for contracting for additional peanuts due to the effect of adverse weather or related conditions upon the peanut crop; (6) financial guarantees to assure the exportation or crushing of contract additional peanuts; (7) marketing penalties; (8) terms and conditions for price support; and (9) permitting the purchase of contract additional peanuts for domestic use pursuant to actions taken under section 22 of the Agricultural Adjustment Act of 1933, as amended.

DATES: This interim rule is effective April 19, 1991. Comments must be received on or before May 20, 1991 in order to be assured of consideration.

ADDRESSES: Send comments to the Director, Tobacco and Peanuts Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All written submissions made pursuant to this notice will be made available for public inspection in room 5750 South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David L. Kincannon (ASCS), 202-382-0152.

SUPPLEMENTARY INFORMATION: A Preliminary Impact Analysis describing the options considered in developing this interim rule is not required.

This interim rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and has been classified "not major" because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more, nor will it result in major increases in costs or prices for consumers, individual industries, Federal, State or local governments, or geographical regions. Furthermore, it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based

enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this interim rule applies are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

This interim rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). Except for the contract form provided in § 1446.401, the information collections required by the regulations of 7 CFR part 1446 have been reviewed by OMB, assigned OMB control numbers 0560–0006 and 0560–0014, and approved through May 31, 1992. This interim rule does not change the information collections as approved under control numbers 0560–0006 and 0560–0014. The contract form required by § 1446.401 will be submitted for OMB approval prior to publication of the final rule applicable to these regulations. Public reporting burden for these collections of information is estimated to vary from 9 to 30 minutes per response, with an average of 15 minutes per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0560–0006; #0560–0014), Washington, DC 20503.

Statutory Background

Title VIII of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624), which was enacted on November 28, 1990, amended the Agricultural Adjustment Act of 1938 (the "1938 Act") and the Agricultural Act of 1949 ("the 1949 Act") to provide, for the 1991 through 1995 crop years, for the peanut price support program and for the contracting, handling, and disposing of additional peanuts.

Interim regulations

This interim rule implements the amended provisions of the 1938 Act and the 1949 Act with respect to peanut warehouse-stored loans, contract additional peanuts, peanut handler operations, and other matters. Since peanut farmers are now planting their 1991 crop of peanuts and need to be informed of program provisions as soon as possible and since this rule will affect those plans, it has been determined that it would be impracticable and contrary to the public interest to delay implementation of this rule. The interim rules are subject to change upon consideration of the comments. Significant provisions of the interim regulations are described below.

A. Obligation to Export or Crush Additional Peanuts Contracted For Such Purposes

Statutory Provisions.

Section 359a(d)(2) of the 1938 Act provides that handlers who agree to operate in accordance with regulations applicable to nonphysical supervision shall dispose of additional peanuts in the following amounts by kernel type:

(1) Sound split kernel peanuts in an amount equal to the amount of sound split kernels purchased by the handler as additional peanuts to which, under price support loan schedules, a mandated deduction with respect to the price paid to the producer of the peanuts would be applied due to the percentage of the sound split kernels in the lot of peanuts delivered for marketing.

(2) Sound mature kernel peanuts in an amount equal to the total amount of sound mature kernels and sound split kernels purchased by the handler as additional peanuts, less the total poundage of sound split kernel peanuts described in the preceding paragraph. For purposes of determining the disposition obligation, the term sound mature kernel peanuts includes sound split kernels and sound whole kernels.

(3) The remaining quantity of total kernel content of peanuts purchased by the handler as additional peanuts.

Interim Regulations

Section 1446.601(b) of the interim regulation provides that the disposition obligation for sound split (SS) kernel peanuts is the amount of SS kernels of peanuts delivered under a contract for export or crushing which were in excess of the maximum amount of SS kernels that, under price support loan schedules, would not require a deduction with respect to price support advance due to the percentage of SS kernels. For the 1990 crop of peanuts, 4 percent of the peanuts in the lot could be SS kernels without a mandatory deduction being made with respect to a price support advance. A determination with respect to the deduction has not been made for the 1991 crop of peanuts. Under the interim rule, the percentage of SS kernels in a lot of peanuts that is in excess of the maximum that may be permitted without a deduction under the applicable price support loan schedule will be reduced by the percentage points of such maximum amount and the resulting percentage shall be used for purposes of determining the handler's obligation to export or crush SS kernel peanuts.

Section 1446.601(c) provides that the disposition obligation for sound mature kernels (SMK) will be the amount of SMK and SS kernels purchased by the handler as contract additional peanuts, less the amount of the SS kernel obligation determined in § 1446.601(b).

Section 1446.601(d) provides that the disposition obligation for the remaining kernels is the balance of the total kernel content (TKC) of peanuts purchased as contract additional peanuts and includes "other kernels," "damaged kernels" and "loose shelled kernels."

B. Shrink Allowance Under Nonphysical Supervision

Statutory Provisions

Section 359a(d)(2)(B)(iv) of the 1938 Act, as amended, provides that the shrink allowance permitted for handlers operating under nonphysical supervision shall be an amount to reflect actual dollar value shrinkage experienced by such handlers in commercial operations, but not less than 4 percent.

Interim Regulations

The 4 percent minimum peanut shrink allowance established by the 1938 Act for the 1991 through 1995 peanut crops compares with a 4.5 percent allowance in effect for the 1990 peanut crop. Section 1446.601 of this interim rule provides for a 4.5 percent shrink allowance, the same shrink allowance as was permitted for the 1988 through 1990 peanut crops.

Presently, a peanut shrink study is being conducted in cooperation with the Agricultural Research Service. The final results of the study will not be known

until after the completion of the marketing of the 1991 crop of peanuts. CCC will review the results of the shrink study when it is completed to determine whether the shrink allowance should be adjusted. If the analysis of the shrink study and of other information applicable to shrink indicates that an incongruity exists between the "actual" shrink and the 4.5 shrink allowance permitted by the regulations and that an adjustment in the allowance may be warranted, the shrink allowance will be reconsidered.

C. Substitution of Peanut Products Exported to Eligible Countries

Statutory Provisions

Section 359a(e) of the 1938 Act provides that a manufacturer of peanut products using domestic edible peanuts (quota peanuts) may export the products and receive credit for the fulfillment of export obligations acquired by such manufacturer from the purchase of additional peanuts of the same type and crop year used in the domestic market.

Section 359a(e)(2) of the 1938 Act requires that all peanut product manufacturers must submit annual certifications of peanut product content on a product-by-product basis, and to report any changes in the product formulas within 90 days of the changes. Also, the 1938 Act directs the Secretary to conduct an annual review of the certifications and to pursue all available remedies with respect to persons who fail to comply with regulations applicable to reporting product content.

Interim Regulations

Section 1446.603 of this interim rule provides that disposition credit for peanut products made from quota peanuts may be earned for the export of such peanut products to an eligible country.

This provision allows manufacturers of peanut products to operate, with respect to substitution, in a similar fashion as handlers of shelled peanuts. That is, manufacturers of peanut products may substitute additional peanuts or peanut products made from additional peanuts into the domestic market as replacements for the equivalent peanut content of products made from quota peanuts of the same type and crop year which are exported and for which export credit is earned.

Section 1446.603 of this interim rule requires peanut product manufacturers to submit annual certifications of peanut product content and report formula changes as required by statute. Also, under this rule, peanut product manufacturers are subject to a penalty of 140 percent of the national average quota support rate times the quantity of peanuts processed with a peanut product content that differs from the certification made by the manufacturer.

D. Contracting Additional Peanuts for Export or Crushing

Statutory Provisions

Section 359a(f) of the 1938 Act provides that:

(1) A completed contract shall be submitted to the Secretary for approval not later than September 15 of the year in which the crop is produced.

(2) The Secretary may extend the September 15 deadline by up to 15 days in response to damaging weather or related condition. Such extension shall be announced no later than September 5 of the year in which the crop is produced.

(3) The contract shall be executed on a form prescribed by the Secretary.

(4) A handler wishing to handle additional peanuts shall submit to the Secretary such information as may be required for handling and disposing of such peanuts by such date so as to permit final action to be taken on the application by July 1 of each marketing year.

Interim Regulations

Section 1446.401 of this interim rule provides that a contract for additional peanuts for export or crushing shall be submitted by September 15 and provides for extending the deadline by up to 15 days.

The interim regulations would require that the contract be on form CCC–1005 that must be duplicated by handlers.

Section 1446.402(a) provides that the information required from handlers for approval to handle contract additional peanuts shall be submitted by such handlers no later than June 15 of each year. This date allows another 15 days for review and follow-up of submitted material, and for making any determination of handler approval by July 1.

E. Financial Guarantee

Statutory Provisions

Section 359a(d)(3) of the 1938 Act requires that a handler of additional peanuts submit financial guarantees to assure the proper disposal of additional peanuts acquired for export or crushing.

Interim Regulations

Section 1446.403 of this interim regulation requires that handlers who contract or otherwise acquire additional peanuts shall submit to the area marketing association a letter of credit based on an amount equal to the larger of the amount of peanuts such handler certifies will be contracted or 90 percent of the amount such handler contracted as additional peanuts during the previous marketing year. The interim regulations provide the basis for determining the amount of the letter of credit. Further, the letter of credit otherwise required for the next year shall be increased by 3 times the amount by which the letter of credit submitted for the immediately preceding crop year was less than would have been required on the basis of the actual amount of additional peanuts acquired by the handler during the preceding crop year. Such letter of credit shall be submitted no later than July 31 of the calendar year in which the marketing of peanuts begins.

F. Suspension of Restriction on Imported Peanuts

Statutory Provisions

Section 359a(f)(6) of the 1938 Act provides that, if the President issues a proclamation under section 22 of the Agricultural Adjustment Act of 1933, as amended, temporarily suspending restrictions on the importation of peanuts, the handler, with the written consent of a producer who has contracted with such handler, subject to such terms as the Secretary may prescribe, may purchase additional peanuts from the producer and market such peanuts for domestic edible use. Under section 22, the Presidential proclamation that currently limits the importation of peanuts to 1,709,000 pounds (shelled basis) may be suspended, terminated or modified.

Interim Regulations

Section 1446.416 of this interim rule provides that under a temporary suspension of restrictions on the importation of peanuts, a handler, with the written consent of the producer, may purchase additional peanuts from producers who contracted with the handler to deliver additional peanuts to such handler and may use such peanuts for sale into the domestic edible market. However, the quantity of peanuts that may be purchased by such handler is limited to the contracted quantity of additional peanuts that remains undelivered by the respective producer at the time that any suspension of restrictions is announced. Other conditions may be announced by the Secretary as needed. Also, under this rule, a temporary increase in the import quota shall not constitute "suspension"

of restrictions on the importation of peanuts as applies to these regulations.

G. Miscellaneous Provisions

In addition to the above, some of the more significant provisions of the interim rule address:

(1) In § 1446.307, the disaster transfer provisions for Segregation 2 or Segregation 3 peanuts;

(2) In § 1446.308, the loan pools and the distribution of pool profits, if any;

(3) In § 1446.309, the "immediate buyback" provisions;

(4) In subpart G, the provisions with respect to penalties and liquidated damages, including in § 1446.705 the provisions with respect to statutory liens on peanuts; and

(5) In subpart H, the provisions relative to recordkeeping and reporting requirements.

List of Subjects in 7 CFR Part 1446

Loan programs—Agriculture, Peanuts, Price support programs, Reporting and recordkeeping requirements, Warehouses.

Interim Rule

Accordingly, 7 CFR Part 1446 is revised in its entirety to read as follows:

PART 1446—PEANUTS

Subpart A—General Provisions

Sec.

Subpart B—Basic Handler Operations

Subpart C—Warehouse Storage Loans

Subpart D—Handling Contract Additional Peanuts—General Provisions

Subpart E—Handling Contract Additional Peanuts—Physical Supervision

Subpart F—Handling Contract Additional Peanuts—Nonphysical Supervision

Subpart G—Penalties and Liquidated Damages

Subpart H—Recordkeeping, Reporting and Paperwork Reduction

Authority: 7 U.S.C. 1359a, 1375, 1421 et seq.; 15 U.S.C. 714b and 714c.

Subpart A—General Provisions

§ 1446.101 General statement.

The regulations contained in this part are issued in accordance with the Agricultural Adjustment Act of 1938, as amended, and the Agricultural Act of 1949, as amended, and are applicable to the 1991 through 1995 crops of peanuts. The regulations govern the contracting of additional peanuts for exporting or crushing, the disposition of contract additional peanuts, the making of warehouse stored price support loans on peanuts, the establishment of loan pools and the distribution of net gains from such pools, the assessment and collection of penalties, and recordkeeping and reporting requirements. Program announcements will be issued to specify national average support rates, and other provisions that may be required in order to implement these regulations.

§ 1446.102 Administration.

(a) *Responsibility.* The Tobacco and Peanuts Division (TPD), Agricultural Stabilization and Conservation Service (ASCS), will administer this part under the general direction and supervision of the Administrator, ASCS, or the Executive Vice President, Commodity Credit Corporation (CCC), as applicable. In the field, these regulations shall be carried out by State and county Agricultural Stabilization and Conservation (ASC) committees and marketing associations that have contracted with CCC for such purposes.

(b) *Limitation of authority.* A State or county committee or its employees or representatives, or any marketing association or its employees or representatives, may not modify or waive any of the provisions of this part or any amendment or supplement thereto.

(c) *Supervisory authority.* Delegation of authority contained in this part shall not preclude the Administrator, ASCS, the Executive Vice President, CCC, or a designee of such person from determining any questions arising under the regulations or from reversing or modifying any determinations made pursuant to such delegation.

§ 1446.103 Definitions.

The definitions set forth in this section shall be applicable for all purposes of

program administration. The terms defined in part 719 of this title shall also be applicable except where those definitions conflict with the definitions set forth in this section.

Additional loan rate. The price support loan rate that is applicable to a lot of additional peanuts.

Adequate assets. Assets less liabilities determined by the marketing association, acting pursuant to instructions of CCC, to be sufficient to assure the export or crushing of contract additional peanuts in compliance with the provisions of this part. Assets may include, but are not limited to, accounts receivable, value of inventory, equipment, plant, property, and investments. Liabilities may include accounts payable, mortgages, loans, letters of credit and other obligations.

Adequate facilities. Weighing, grading, shelling and/or milling equipment, storage facilities, and other physical plant and equipment owned, leased or subleased by a handler, as determined by the marketing association to be sufficient to receive, store, process, and ship all the contract additional peanuts to be handled in, by, through, or in connection with such facilities into the export or domestic market.

All other (AO) kernels. The peanut kernels remaining in the total kernel content of a lot of peanuts after excluding sound mature kernels and sound split kernels. AO kernels consists of damaged kernels, other kernels, and loose shelled kernels, as identified and determined by the Federal-State Inspection Service.

ASCS. The Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

Buyback. A term used to describe a marketing transaction in which a producer places additional peanuts under loan at the additional loan rate and a handler simultaneously purchases such peanuts from the marketing association for seed or other domestic edible uses.

CCC. The Commodity Credit Corporation, an agency and instrumentality of the United States within the United States Department of Agriculture.

Commercial quantity. For purposes of determining penalties that may be due if additional peanuts that were exported are subsequently reentered into the United States, commercial quantity means any quantity of such peanuts that were reentered by any person during any marketing year if the total quantity reentered by such person or a related person exceeds 200 pounds of farmers stock peanuts or 150 pounds of shelled peanuts

Concealed rancidity, mold or decay (RMD). Peanut kernels affected by rancidity, mold or decay which is not apparent by external examination.

Contract additional peanuts. Additional peanuts for crushing or exportation, or both, for which a contract has been entered into between a handler and producer in accordance with this part.

Crushing. The processing of peanuts to extract oil for food uses and meal for uses as allowed by the provisions of this part or the processing of peanuts by crushing or otherwise when authorized by the Secretary.

Current marketing year. The marketing year that begins on August 1 during the calendar year in which the applicable crop of peanuts was planted.

Damaged kernels (DK). Defective whole kernels which ride the screen officially designated for the peanut type, and the defective splits found in farmers stock which, as determined upon an official inspection by an inspector:

(1) Are rancid, decayed or moldy;

(2) Have sprouts more than ⅛ inch long;

(3) Are affected by insects, worm cuts, web or frass;

(4) Are dirty, with appearance materially affected;

(5) Are affected by flesh discoloration or skin discolorations affecting more than 25% of the surface; or

(6) Are affected by freezing, or have any characteristic of freeze damage.

DASCO. The Deputy Administrator, State and County Operations, ASCS.

Dollar value. An amount determined as follows:

(1) For inspected peanuts, the total of the amounts determined from each applicable form ASCS–1007, Inspection Certificate and Sales Memorandum, by multiplying the applicable quantity by the quota loan rate that would apply to peanuts of the type and quality recorded on such form ASCS–1007 without regard to whether such peanuts were found to contain visible Aspergillus flavus mold.

(2) For noninspected peanuts, the amount determined by multiplying the quantity involved by the national average price support rate for quota peanuts.

Domestic edible use. Domestic edible use means:

(1) Use of peanuts for milling to produce domestic food peanuts (including the processing of peanuts into flakes);

(2) Use of peanuts for seed, excluding unique strains which meet both of the following requirements:

(i) They are not commercially available, and

(ii) They are used exclusively for the production of green peanuts; and

(3) Use of peanuts on a farm.

Edible export standard for contract additional peanuts. The standards for raw shelled or in-shell peanuts of any crop exported for human consumption constituting U.S. Standards grade requirements, or modifications thereof, and requirements as to wholesomeness, as are specified in the outgoing quality regulations for such crop as set forth in the Marketing Agreement No. 146, Regulating the Quality of Domestically Produced Peanuts (the Peanut Marketing Agreement No. 146), except that peanuts shown by the applicable form FV–184–9, Federal-State Inspection Certificate (Peanuts), to deviate from these requirements shall be considered as meeting such requirements if the handler certifies to the marketing association that such deviations are:

(1) Acceptable to the export buyer; and

(2) Fall within the range of deviations allowable under the Peanut Marketing Agreement No. 146.

Eligible country. With respect to credit for exportation of additional peanuts, any destination outside the United States for which an export license may be acquired, except that with respect to the 1991 crop, neither Canada nor Mexico shall be considered an eligible country for the purpose of exporting peanut products.

Eligible peanuts. Eligible peanuts are farmers stock peanuts that:

(1) Were produced in the United States by an eligible producer;

(2) Were planted during the year in which the current marketing year begins;

(3) Are free and clear of any liens and encumbrances, except a statutory lien that has resulted from failure to pay a peanut poundage quota penalty, unless acceptable waivers are obtained;

(4) Unless otherwise approved by the Executive Vice President, CCC, were produced in the area served by the marketing association through which the price support loan is being requested;

(5) Were not produced on land owned by the Federal Government if such land is occupied without a lease permit or other right of possession; and

(6) Have been inspected and have an official grade determined by a Federal or Federal-State inspector.

Eligible producer. An eligible producer for purposes of price support under this part shall be a person who meets all of the following:

(1) As a landowner, landlord, tenant, or sharecropper, the person produced the peanuts that are being pledged as

collateral for a price support loan or is a bona fide successor to such person.

(2) The person has beneficial interest in the peanuts that are being pledged as collateral for a price support loan and had such beneficial interest before such peanuts were harvested.

(3) The person is in compliance with the provisions of:

(i) Part 12 of this title relating to persons producing agriculture commodities on wetlands or highly erodible land.

(ii) Part 796 of this title relating to growing a controlled substance.

(iii) Part 1498 of this title relating to the eligibility of foreign persons for loans or benefits.

(4) That is not ineligible for a price support loan under any other provision of law or regulation.

Export and exportation. A shipment of peanuts or peanut products from the United States that is directed to a country outside the United States for which a statement, which is signed by the handler and specifies the name and address of the consignee, is made available to the marketing association or CCC, or, upon request by the marketing association or CCC, for which a consignee receipt is made available to the marketing association or CCC.

Farmers stock peanuts. Picked or threshed peanuts produced in the United States which have not been changed (except for removal of foreign material, LSK's, and excess moisture) from the condition in which picked or threshed peanuts are customarily marketed by producers, plus any LSK's that are removed from farmers stock peanuts before such farmers stock peanuts are marketed.

Foreign material (FM). Anything other than peanuts, which is found in farmers stock peanuts.

Handler. Any person that acquires peanuts for resale, domestic consumption, processing, exportation, or crushing through a business involved in buying and selling peanuts or peanut products.

In-shell peanuts. Cleaned peanuts in the shell which are mature, dry and free from:

(1) LSK's,

(2) Dirt or other foreign material,

(3) Pops,

(4) Paper ends, and

(5) Damage caused by cracked or broken shells.

Inspector. A Federal or Federal-State inspector authorized or licensed by the Administrator, Agricultural Marketing Service, United States Department of Agriculture (USDA), to grade peanuts.

Liquidated damages. An amount due, but not as a penalty, as an amount estimated to be the probable damage to the peanut price support program when a producer or handler has taken an action that is contrary to the regulations in this part and a determination is made in accordance with such regulations that such action may damage the administration or efficiency of the price support program.

Loan rate. The applicable national average support rate announced by the Secretary for quota or additional peanuts for the current year, as adjusted for differences in grade, type, quality, location and other factors.

Loan value. For eligible farmers stock peanuts, the amount determined by multiplying the applicable loan rate, as determined for the applicable marketing category, by the net weight of such peanuts that are pledged as collateral for a price support loan.

Loose shelled kernel (LSK). Peanut kernels or portions of kernels determined by official inspection to be free of their hulls and scattered in farmers stock peanuts.

Lot—(1) *Farmers stock peanuts.* That quantity of farmers stock peanuts for which one form ASCS–1007 or other inspection certificate is issued. For farmers stock peanuts delivered to the marketing association for a price support loan advance, a lot shall consist of the contents of one vehicle, except that a lot may consist of the contents of two or more vehicles if the contents of such vehicles do not exceed a total of approximately 24,000 pounds of peanuts.

(2) *Milled peanuts.* That quantity of milled or shelled peanuts for which one form FV–184–9 or substitute approved for general use by the Executive Vice President, CCC, is issued. The lot size of such peanuts in bulk or bags shall not exceed 200,000 pounds.

Marketing association. An area marketing association selected and approved by the Secretary which is operated primarily for the purpose of conducting loan activities as provided for in this part. The approved area marketing associations and the areas served by such associations are as follows:

(1) *GFA Peanut Association of Camilla, Georgia (GFA).* GFA serves the Southeastern area consisting of Puerto Rico, the U.S. Virgin Islands, and the States of Alabama, Florida, Georgia, Mississippi and that part of South Carolina south and west of the Santee-Congaree-Broad Rivers;

(2) *Peanut Growers' Cooperative Marketing Association of Franklin, Virginia (PGCMA).* PGCMA serves the Virginia-Carolina area consisting of the District of Columbia, and the States of Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, West Virginia, Wisconsin and that part of South Carolina north and east of the Santee-Congaree-Broad Rivers; and

(3) *Southwestern Peanut Growers Association of Gorman, Texas (SWPGA).* SWPGA serves the Southwestern area consisting of the States of Alaska, Arizona, Arkansas, California, Colorado, Hawaii, Idaho, Kansas, Louisiana, Montana, Nebraska, New Mexico, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington and Wyoming, and all other territories of the United States not listed in paragraphs (1) or (2).

Marketing card. Form ASCS–1002, Peanut Marketing Card, that has been issued in accordance with part 729 of this title for use, at the time of each initial marketing of peanuts from a farm, to identify the farm on which such peanuts were produced and to provide other pertinent information that may be required when such peanuts are marketed.

Marketing penalties—(1) *Producer.* For producers, the penalties prescribed in part 729 of this title.

(2) *Handler.* For handlers, the penalties which are prescribed, computed, assessed and collected in accordance with this part and are effective for the applicable crop.

Marketing year. The 12-month period beginning on August 1 of a year in which the peanuts are planted and ending on July 31 of the following year.

Net weight. Unless otherwise specified in this part, the gross weight of a lot of farmers stock peanuts, as recorded on the form ASCS–1007, less:

(1) The weight of any foreign material in such lot; and

(2) The amount determined by subtracting 7 percentage points from any percentage of moisture in excess of 7 percent and multiplying the result by the gross weight of such lot excluding foreign material.

Nonphysical supervision. Supervision of the disposition of additional peanuts whereby representatives of the marketing association or other representatives of the Secretary can determine, in accordance with this part, whether additional peanuts purchased for crushing or export have been disposed of in accordance with the provisions of this part without the "physical" presence of such representatives to verify the actual handling and disposition of such

peanuts. Such supervision shall be conducted in accordance with this part and shall consist of the review and analysis of records which handlers are required to make available to representatives of the Secretary for the verification of proper disposition of additional peanuts under this supervision option.

Other kernels (OK). The kernels in farmers stock peanuts which pass through screens to separate them from the sound mature kernels, but excluding sound split kernels, damaged kernels, and broken pieces less than ¼ of a whole kernel.

Participating warehouse. A storage facility whose owner or operator has entered into a peanut receiving and warehouse contract agreeing to the provisions of such contracts for the care, storage and delivery of peanuts pledged to CCC as collateral for price support loans.

Peanut meal. Any meal, cake, pellets, or other forms of residue remaining after extraction or expulsion of oil from peanut kernels, but not including pressed peanuts.

Peanut product. Any product, other than peanut oil, peanut meal or treated seed peanuts which is manufactured or derived from peanuts including, but not limited to, peanut candy, peanut butter, roasted peanuts (either shelled or in-shell), pressed peanuts, and peanut granules.

Peanut receiving and warehouse contract. Form CCC–1028, Peanut Receiving and Warehouse Contract (Identity Preserved Storage), or form CCC–1028–A, Peanut Receiving and Warehouse Contract (Commingled Storage), or any other form approved for general use by CCC for the purpose of receiving and warehousing loan collateral peanuts.

Physical supervision. The supervision, in accordance with this part, by representatives of the marketing association or other representatives of the Secretary of the handling and disposition of contract additional or CCC stocks of additional peanuts which have been sold for crushing or export. Such supervision requires, as provided for in this part, the "physical" presence of such representatives to observe the actual handling, loading, shelling, transportation, processing, and exportation of peanuts which have been purchased or otherwise designated as additional peanuts.

Pools. Accounting pools established by the marketing association in accordance with this part for peanuts that have been pledged as collateral for price support loans.

Quota loan rate. The price support loan rate that is applicable to a lot of quota peanuts.

Quota peanuts. Peanuts which are:

(1) Eligible for domestic edible uses; and

(2) Marketed or considered marketed from a farm as quota peanuts pursuant to the provisions of part 729 of this title and are not in excess of the effective farm poundage quota established for the farm on which such peanuts were produced.

Raw peanuts. In-shell peanuts, shelled peanuts, blanched peanuts, or any other classification of peanuts as designated by CCC which have not passed through any other processing operations.

Segregations. For purposes of the peanut price support program, farmers stock peanuts shall be identified by 1 of 3 segregations, as identified and determined by the Federal-State Inspection Service, as follows:

(1) *Segregation 1.* Segregation 1 peanuts are farmers stock peanuts which are free from visible Aspergillus flavus mold and which:

(i) Have at least 99 percent peanuts of one type;

(ii) Have not more than:

(A) 2.49 percent damaged kernels (rounded to nearest whole number);

(B) 1.00 percent concealed damage caused by rancidity, mold or decay;

(C) 0.50 percent freeze damage;

(D) 14.49 percent LSK's; and

(iii) Are free from any offensive odor.

(2) *Segregation 2.* Segregation 2 peanuts are farmers stock peanuts which are free from visible Aspergillus flavus mold and which either:

(i) Have less than 99 percent peanuts of one type; or

(ii) Have more than:

(A) 2.49 percent damaged kernels (rounded to the nearest whole number); or

(B) 1.00 percent concealed damage caused by rancidity, mold, or decay;

(C) 0.50 percent freeze damage; or

(D) 14.49 percent LSK's; or

(iii) Have an offensive odor.

(3) *Segregation 3.* Segregation 3 peanuts are farmers stock peanuts which have visible Aspergillus flavus mold.

Sound mature kernel (SMK). A whole kernel which rides the screen officially designated for the peanut type and as identified and determined by the Federal-State Inspection Service to be SMK's.

Sound split (SS) kernel. A peanut kernel which is a split or broken kernel as identified and determined by the Federal-State Inspection Service to be a SS kernel.

Support rate—(1) *National average.* The national average price support rate shall be the rate so announced on an annual basis by the Secretary in conformity to section 108B of the Agricultural Act of 1949, as amended.

(2) *By types.* With respect to each of the types of peanuts, the price support rate by type shall be the rate so announced on an annual basis by the Secretary for the particular type of peanuts on the basis of the differences between the types and the anticipated weighted average on a national basis of the quality factors and other factors affecting value for the respective types.

Total kernel content (TKC). The TKC of a lot of peanuts is the total of SMK's, SS kernels, and AO kernels in such lot.

TPD. The Tobacco and Peanuts Division of ASCS.

Type. The generally known genetic varieties or types of peanuts (i.e., Runner, Spanish, Valencia, and Virginia), as identified and determined by the Federal-State Inspection Service.

United States. The 50 States of the United States, Puerto Rico, the territories of the United States, and the District of Columbia.

United States government agency. Any department, bureau, administration, or other agency of the Federal Government or corporation wholly owned by the Federal Government.

§ 1446.104 Performance based upon action or advice of a representative of the Secretary.

The provisions of part 791 of this chapter with respect to performance based upon action or advice of any authorized representative of the Secretary shall be applicable to this part.

§ 1446.105 Handling payments and collections not exceeding $9.99.

In order to avoid administrative costs of making small payments and handling small accounts, amounts of $9.99 or less which are due the handler will be paid only upon the handler's request. Deficiencies of $9.99 or less, including interest, may be disregarded unless demand for payment is made by CCC.

Subpart B—Basic Handler Operations

§ 1446.201 General handler provisions.

(a) *Handler registration and approval.* To avoid marketing penalties otherwise provided in this part for failure to register as a handler, each person who plans to acquire peanuts for processing or resale must register as a handler and be approved as a handler in accordance with this paragraph.

(1) *Registration.* Registration must be made on the form ASCS–1008, Application for Handler Card, and must be filed:

(i) For each marketing year in which such person expects to acquire peanuts for processing or resale.

(ii) With each marketing association that serves the marketing area in which such person plans to acquire peanuts during the applicable marketing year.

(iii) Prior to the time such person acquires peanuts, during the respective marketing year, within the marketing area served by such marketing association.

(2) *Approval.* The determination of whether a handler will be approved shall be made by the applicable marketing association in which the registration was filed and, in the case of approval, such approval shall be evidenced by a handler registration number that is issued by such marketing association.

(b) *Handler of loan peanuts.* To handle loan peanuts, either quota or additional, a person must be approved as a handler and must contract with the marketing association on form CCC–1028 or form CCC–1028–A to handle such peanuts. To contract to handle loan peanuts, the handler must meet all requirements of the applicable warehousing contract with respect to receiving, handling and storing loan peanuts.

(c) *Handler of contract additional peanuts.* To handle contract additional peanuts in a marketing area, a person must be approved as a handler for that area in accordance with this part.

(d) *Marketing assessments and marketing penalties.* A handler shall collect and pay marketing assessments and marketing penalties in accordance with the provisions in part 729 of this title.

(e) *Penalties and other remedies.* Any handler that fails to register in accordance with this section shall be subject to all penalties that may apply to handlers under this part and all other remedies that apply against handlers. Further, such handler shall be subject to penalties for non-registration as may apply.

§ 1446.202 Peanut buyer card and buying point card.

(a) *Peanut buyer card.* The marketing association which approves a handler will assign a registration number to such handler and CCC will issue an embossed peanut buyer card which will show the handler's registration number, name and address. The handler will use the buyer card for identification when buying or selling peanuts.

(b) *Buying point card.* CCC will issue a buying point card to the Federal-State Inspection Service for delivery to each handler who operates a buying point at which peanuts are inspected. The buying point card will show a buying point number that will be used to identify the physical location of such buying point.

§ 1446.203 Marketing card entries and collection of assessments, penalties and debts.

The handler shall make marketing card entries and shall collect assessments, penalties and debts in accordance with the provisions in this part and in part 729 of this title.

(a) *Indebtedness to the United States due to peanut marketing penalties.* As provided in part 729 of this title, if a producer is indebted to the United States for a peanut marketing penalty, such penalty shall result in a lien in favor of the United States on any peanuts in which such producer has an interest and any person who acquires peanuts from such producer shall be considered to have notice of such lien at the time such lien becomes attached. Except with respect to any lien that was perfected before the peanut poundage quota lien became attached in those cases not involving peanuts placed in the price support loan inventory, any person who acquires peanuts from such producer shall deduct the lien amount plus any applicable interest from the proceeds otherwise due to such producer as a result of the acquisition of the peanuts. Any deducted amount shall be paid to CCC in accordance with instructions issued by the Deputy Administrator. In the event a required deduction is not made from the proceeds for such peanuts, the person who acquires such peanuts shall be liable to CCC for the amount of the lien, to the extent of the market value of such peanuts or proceeds of the peanuts whichever is higher.

(b) *Farmers Home Administration lien.* If a Farmers Home Administration lien has been recorded on the marketing card that was issued for the use of a producer when marketing peanuts, the purchaser of such peanuts shall make the check jointly payable to the producer and Farmers Home Administration for the proceeds from such peanuts. However, if a peanut poundage quota lien was also recorded on the marketing card against such producer, the check shall be made payable jointly to the producer and CCC.

§ 1446.204 Transmittal of collections of penalties and claims.

(a) *Commercial purchases.* A handler shall use form ASCS–1012, Buyer's Transmittal of Claims and/or Marketing Penalty, to transmit to ASCS any marketing penalty or peanut poundage quota lien that is collected directly or indirectly from a producer at the time such producer marketed peanuts as quota commercial or contract additional peanuts. Such collections shall be made in accordance with the requirements of part 729 of this title. A collection is considered to have been made at the time of marketing the peanuts. Each collection shall be sent to the county ASCS office which issued the marketing card and, unless otherwise approved by the Executive Vice President, CCC, shall be sent within 15 days after the collection is made.

(b) *Loan peanuts.* Withholdings from the loan value due a producer which represent collections of marketing penalties, peanut poundage quota liens or U.S. claims shall be transmitted or handled in accordance with instructions issued by the marketing association or CCC.

Subpart C—Warehouse Storage Loans

§ 1446.301 Eligibility of peanuts for price support at the quota loan rate.

For peanuts to be eligible for a price support loan at the quota loan rate such peanuts:

(a) Must be eligible peanuts that were produced by an eligible producer;

(b) Must be Segregation 1 peanuts;

(c) If mechanically dried, must contain at least 6 percent moisture;

(d) Must not contain more than:

(1) 10.49 percent moisture;

(2) 10 percent foreign material; or

(3) 14.49 percent LSK's;

(e) When added to prior marketing of quota peanuts from the farm, must not exceed the effective quota established for the farm on which such peanuts were produced.

§ 1446.302 Eligibility of peanuts for price support at the additional loan rate.

(a) *General.* For peanuts to be eligible for a price support loan at the additional loan rate, such peanuts:

(1) Must be eligible peanuts that were produced by an eligible producer;

(2) must not contain more than:

(i) 10.49 percent moisture;

(ii) 10 percent foreign material; or

(iii) 14.49 percent LSK's.

(b) *Exception to general requirements.* Notwithstanding the provisions in paragraph (a) of this section:

(1) *Seed peanuts.* Peanuts that were produced for seed under the auspices of

a State agency that controls the production of seed peanuts may receive a price support loan at the additional loan rate if:

(i) Such peanuts are eligible peanuts that were produced by an eligible producer; and

(ii) In accordance with this part, the handler purchases the peanuts from the loan inventory for domestic seed use in accordance with this part.

(2) *Peanuts with excess moisture, foreign material, or LSK's.* Peanuts that contain excessive moisture, foreign material, and/or LSK's may receive a price support loan at the additional loan rate if the marketing association determines:

(i) That the moisture level is acceptable for storage until such peanuts may be crushed; and

(ii) That the producer made a bona fide effort to clean such peanuts prior to offering such peanuts as collateral for a price support loan.

§ 1446.303 Delivery of peanuts for price support advance.

(a) *Warehouse storage loans.* Any warehouse operator who has entered into a contract with the marketing association to receive and store peanuts shall inform producers that price support advances are available and shall make such advances on eligible peanuts tendered for price support as provided in such contract.

(b) *Where available.* Unless otherwise approved by the marketing association or by CCC, producers must deliver farmers stock peanuts to any participating warehouse that is located in the same marketing area in which the peanuts were produced. The names and locations of participating warehouses may be obtained from the office of the appropriate marketing association or from State or county ASCS offices.

(c) *Contract requirements.* Any contract for receiving and storing peanuts pledged as collateral for a price support loan shall require the warehouse operator to:

(1) Examine the producer's marketing card to determine price support eligibility;

(2) Make entries on the marketing card as required by § 729.304 of this title and by this part; and

(3) Execute a form ASCS–1007 in accordance with this part for each lot of peanuts on which a price support advance is made.

(d) *Time.* Price support advances to eligible producers on peanuts of any crop will be available from the beginning of the marketing year through the following January 31 or such later date as may be established by the Executive Vice President, CCC.

(e) *Inspection.* An inspector shall determine the type and quality of each lot of farmers stock peanuts that is delivered to a participating warehouse for a price support advance from the marketing association.

(f) *Producer agreement.* To obtain a price support advance, the producer shall provide written authorization to the marketing association, and in the form prescribed by the applicable marketing association, to pledge the producer's peanuts to CCC as collateral for a warehouse storage loan and in so doing, the producer shall relinquish any right to redeem or obtain possession of such peanuts.

(g) *Advance to the producer.* For each lot of peanuts delivered by a producer to a participating warehouse for a price support advance, the warehouse operator, acting in behalf of the marketing association:

(1) Shall inquire of each producer as to whether any liens, other than a statutory peanut poundage quota lien, exist on peanuts offered for loan and shall note the response on form CCC–1041, Warehouse Receipt and Draft (A failure to make such an inquiry shall render the warehouseman liable for the amount of the lien to the extent of any loss to CCC);

(2) Shall advance to the producer the applicable loan value of such peanuts. However, if a lien exists, the loan advance draft, form CCC–1041, shall be made payable jointly to the producer and each known lienholder except in those cases in which a peanut poundage quota lien was attached, as provided in part 729 of this title before any other lien was recorded. In such case the peanut poundage quota lien shall be deducted from the proceeds and a draft may be issued for any remaining balance;

(3) Shall deduct from such advances any:

(i) Marketing penalty;

(ii) Marketing assessment as provided in part 729 of this title;

(iii) Peanut poundage quota lien;

(iv) Assessment or excise tax imposed by State law;

(v) U.S. claim;

(vi) Farm storage facility loan installment payment that is currently due to CCC; and

(vii) Any other debt that is owed by such producer to a United States government agency.

(4) As applicable, shall transmit, in accordance with applicable instructions, such deducted amounts to the:

(i) County ASCS office;

(ii) Applicable State agency; or

(iii) CCC; and

(5) If such peanuts were produced in the Southwestern area, and upon the prior agreement of the producer, may deduct from such advance an amount approved by CCC, but not to exceed $1.00 per net weight ton of peanuts, to be used in financing the marketing association's peanut related activities outside the price support program.

§ 1446.304 Price support loans involving estates, trusts or minors.

(a) *Estates and trusts.* A receiver or trustee of an insolvent or bankrupt debtor's estate, an executor or administrator of a deceased person's estate, a guardian of an estate or of a ward or incompetent person, and trustees of a trust estate may be considered to represent the insolvent debtor, the deceased person, the ward or incompetent, and the beneficiaries of a trust, respectively, and the peanut production of the receiver, executor, administrator, guardian, or trustees attributable to the person represented shall be considered to be the production of the person represented. Loan documents executed by any such person shall be accepted by CCC only if they are valid, as determined by CCC, and such person has the authority to sign the applicable documents.

(b) *Eligibility of minors.* A minor who is otherwise an eligible producer shall be eligible for price support only if such minor meets one of the following requirements:

(1) The right of majority has been conferred on such minor by court proceedings or by statute; or

(2) A guardian has been appointed to manage such minor's property and the applicable price support documents are signed by the guardian; or

(3) An acceptable bond is furnished under which a surety acceptable to CCC guarantees to protect CCC from any loss for which the minor would be liable had such minor been an adult.

§ 1446.305 Additional peanuts ineligible for price support.

(a) *Marketing penalty.* A marketing penalty is due if additional peanuts are marketed or considered marketed in any manner other than:

(1) Through a price support loan at the additional loan rate; or

(2) Through purchase for crushing or export by a handler who, in accordance with this part, has an approved contract with the producer to purchase peanuts for such purpose.

(b) *Delivery to avoid penalty.* Notwithstanding the provisions in paragraph (a) of this section, a person who has produced additional peanuts

may avoid a marketing penalty on such peanuts through forfeiting such peanuts by delivering such peanuts to the marketing association for the area where the peanuts were produced and in accordance with instructions issued by the marketing association if:

(1) Such person is not an eligible producer; and

(2) Such person does not have a contract with a handler to purchase such peanuts for crushing or exportation.

(c) *Interest due.* A producer who pledges peanuts as collateral for a price support loan at the additional loan rate shall refund the loan advance on such peanuts with interest if, subsequent to the time the peanuts are pledged for the loan, it is brought to the attention of the marketing association that such person is not an eligible producer. Interest shall be due:

(1) At the same interest rate that was applicable on funds borrowed from CCC by the marketing association on the date the loan was disbursed.

(2) From the date the loan was disbursed to the date of repayment.

§ 1446.306 Commingling of peanuts.

To facilitate handling and marketing, unless prohibited by a handler's storage contract with the marketing association, a handler may store farmers stock loan peanuts on a commingled basis with peanuts owned by such handler if such peanuts are of like crop, type, area, and segregation.

(a) *Accounting for commingled peanuts.* Except for peanuts purchased from CCC for domestic edible use on an in-grade and in-weight basis, commingled peanuts shall be exchanged on a dollar value basis. Accordingly, when loan peanuts are removed from the warehouse they must be inspected as farmers stock peanuts by an inspector and accounted for on a dollar value, based on the quota loan rate, less a one-time adjustment for shrinkage for each crop.

(b) *Dollar value shrinkage adjustment.* For peanuts that are graded out and accounted for:

(1) Before February 1 of the applicable marketing year, the adjustment of the dollar value for shrinkage shall be:

(i) 3.5 percent for Virginia-type peanuts; and

(ii) 3.0 percent for all other peanuts.

(2) After January 31 of the applicable marketing year, the adjustment of the dollar value for shrinkage shall be:

(i) 4.0 percent for Virginia-type peanuts; and

(ii) 3.5 percent for all other peanuts.

(c) *Maintaining copies of the ASCS–1007's.* The handler shall maintain a copy of each form ASCS–1007 that was issued for any peanuts that are placed in commingled storage and that is issued for any peanuts removed from storage.

(d) *Good commercial practice.* The handler shall receive, store and deliver all such peanuts in accordance with good commercial practice and any instructions provided by CCC.

§ 1446.307 Disaster transfer of Segregation 2 or Segregation 3 peanuts from additional loan to quota loan.

(a) *Transfer of Segregation 2 and Segregation 3 peanuts.* Except as otherwise provided in this section, after a producer has completed marketing all peanuts produced on the farm, such producer may transfer a loan on Segregation 2 or Segregation 3 additional peanuts to a quota loan.

(b) *Limitation of amount eligible for transfer.* The amount of such transfer made in accordance with this section may not exceed the effective farm poundage quota minus the sum of peanuts retained on the farm for seed or other uses and the production of Segregation 1 peanuts on the farm.

(c) *Offset of CCC losses.* As provided in this part, if a producer transfers an additional loan to a quota loan in accordance with the provisions of this section, any pool proceeds otherwise due such producer from peanuts in another pool shall be reduced by the amount of any losses to CCC on the peanuts so transferred.

(d) *Loan value for transferred peanuts*—(1) *Segregation 2 peanuts.* The quota loan value for any lot of Segregation 2 peanuts transferred from an additional loan to a quota loan shall be determined by multiplying the quota loan rate that otherwise would have been applicable for such lot, exclusive of any discount for damaged kernels, by the net weight of peanuts being transferred and deducting from the result the amount of any special discount that may apply for Segregation 2 peanuts transferred in accordance with this section.

(2) *Segregation 3 peanuts.* The quota loan value for any lot of Segregation 3 peanuts transferred from an additional loan to a quota loan shall be determined by multiplying the quota loan rate that otherwise would have been applicable for such lot, exclusive of any discount for damaged kernels, by the net weight of peanuts being transferred and deducting from the result the amount of any special discount that may apply for Segregation 3 peanuts transferred in accordance with this section.

(e) *Transfer provisions*—(1) *Where to apply.* Producers who are eligible to transfer additional loan peanuts to the quota loan pool in accordance with the provisions of this section may apply for such transfers with the county ASCS office.

(2) *Determination of the amount eligible for transfer.* The county office shall determine, in accordance with paragraph (b) of this section, the quantity of additional peanuts which are eligible for transfer.

(3) *Designation of peanuts to be transferred.* The producer must indicate to the county office the net weight and applicable form ASCS–1007 serial numbers for the peanuts to be transferred.

(4) *Applicability of marketings.* Any peanuts that are transferred from an additional loan to a quota loan shall be considered as marketings of quota peanuts and the applicable records shall be appropriately adjusted.

(f) *Supplemental loan payment.* The difference between the additional and quota loan rates for such peanuts, less the appropriate adjustment for the marketing assessment, shall be advanced by the marketing association to the applicable producer.

(g) *Waiver of right to make transfer.* Notwithstanding any other provisions in this section, an additional loan on Segregation 2 or Segregation 3 peanuts shall not be transferred to a quota loan under this section with respect to that quantity of peanuts for which the producer has executed a waiver of the right to make such a transfer in order to obtain indemnity benefits from the Federal Crop Insurance Corporation or has agreed to such a waiver with any other Federal agency.

§ 1446.308 Loan pools.

(a) *Establishment of pools.* Each marketing association shall establish 6 separate loan pools; 1 for each of the 3 segregations of additional peanuts and 1 for each of the 3 segregations for quota peanuts. These pools shall be formed without regard to the type of peanuts (Runner, Virginia, Spanish, or Valencia) involved. However, the SWPGA shall establish 12 separate loan pools for Valencia peanuts produced in New Mexico, namely, for bright hull peanuts and for dark hull peanuts separately, 1 for each of the 3 segregations for additional peanuts and 1 for each of the 3 segregations for quota peanuts. Each marketing association shall maintain separate, complete and accurate records for each loan pool that is established within the marketing association.

(b) *Net gains for quota pools.* Net gains from peanuts in each quota pool shall consist of the amount by which the proceeds from the sale of the peanuts in

such pool are in excess of the indebtedness on the peanuts in such pool.

(c) *Net gains for additional pool.* Net gains for peanuts in each additional pool shall consist of:

(1) The net gains which are in excess of the indebtedness on the peanuts placed in such pool; less

(2) Any amount as provided in paragraph (d) of this section that is allocated to offset any loss on the pools for Segregation 1 quota peanuts, and any other amount properly offset.

(d) *Recovery of losses in quota loan pools*—(1) Except with respect to loan pools for Valencia peanuts produced in New Mexico, if the loan indebtedness on the peanuts in a Segregation 1 quota pool exceeds the proceeds from the sale of the peanuts in such pool, such excess shall be recovered from any net gains in loan pools, other than loan pools for Valencia peanuts produced in New Mexico, in the following order of priority:

(i) Segregation 1, 2 and 3 additional peanut loan pools, proportionately to net gains in each pool, in the same marketing area.

(ii) Segregation 1, 2 and 3 additional peanut loan pools in other marketing areas proportionately to net gains in such pools.

(iii) Quota peanut loan pools in other marketing areas, proportionately to net gains in such pools.

(2) With respect to loan pools for Valencia peanuts produced in New Mexico, if the loan indebtedness on the peanuts in a Segregation 1 quota pool:

(i) For dark hull peanuts exceeds the proceeds from the sale of the peanuts in such pool, such excess shall be recovered from any net gains in loan pools for Valencia peanuts produced in New Mexico and in the following order of priority:

(A) Segregation 1, 2 and 3 additional peanut loan pools for dark hull peanuts, proportionately to net gains in each pool.

(B) Segregation 1, 2 and 3 additional peanut loan pools for bright hull peanuts, proportionately to net gains in such pools.

(C) Quota peanut loan pool for bright hull peanuts.

(D) Other Segregation 1, 2 and 3 additional peanut loan pools, proportionately to net gains in such pools.

(E) Other quota peanut loan pools, proportionately to net gains in such pools.

(ii) For bright hull peanuts exceeds the proceeds from the sale of the peanuts in such pool, such excess shall be recovered from any net gains in loan pools for Valencia peanuts produced in New Mexico and in the following order of priority:

(A) Segregation 1, 2 and 3 additional peanut loan pools for bright hull peanuts, proportionately to net gains in each pool.

(B) Segregation 1, 2 and 3 additional peanut loan pools for dark hull peanuts, proportionately to net gains in such pools.

(C) Quota peanut loan pool for dark hull peanuts.

(D) Other Segregation 1, 2 and 3 additional peanut loan pools, proportionately to net gains in such pools.

(E) Other quota peanut loan pools, proportionately to net gains in each pool.

(e) *Pool distribution*—(1) Net gains as determined in accordance with this section on peanuts in each area pool shall be distributed to each producer who placed peanuts in that pool in proportion to the dollar value of peanuts placed in such pool by that producer, except that the proceeds available for the amount of distribution shall be subject to the offsets set forth in paragraph (f) of this section and the other conditions set forth in this section; and

(2) Distributions shall not be assigned to any other party.

(f) *Offset for certain pool transfers.* In addition to other offsets provided for in this section, proceeds due any producer from any profit pool shall be reduced further to the extent of any loss that is incurred with respect to peanuts such producer has transferred from any additional loan to a quota loan for pricing purposes pursuant to the provisions of § 1446.307 of this part.

(g) *Loan indebtedness.* With respect to determining the gains and losses in accordance with this section for loan pools for quota and additional peanuts, the term "indebtedness" with respect to a pool shall include, but is not limited to, the following expenses associated with such peanuts:

(1) Loan advance to producers.

(2) Inspection fees.

(3) Storage and handling charges.

(4) Shelling costs.

(5) Transportation and related charges.

(6) Administrative and supervision expenses.

(7) Interest applicable to any repayable amount.

§ 1446.309 Immediate buyback and sale of loan peanuts to the storing handler.

(a) *"Immediate buyback" purchase of additional peanuts*—(1) *Producer consent.* If the producer of a lot of additional peanuts has consented to an "immediate buyback" of such peanuts by a handler, as indicated by a designation recorded on the form ASCS–1002, the handler that acts for the marketing association in advancing funds to the producer for a price support loan at the additional loan rate on such peanuts may purchase such peanuts from the marketing association for domestic edible use in accordance with instructions from the marketing association and at a price equal to 100 percent of the quota loan value of such peanuts plus a handling charge, as determined by the marketing association and approved by CCC, to cover all costs incurred with respect to such peanuts for inspection, warehousing, shrinkage, and other expenses.

(2) *Time for buyback purchase.* An "immediate buyback" purchase may be made only in connection with the marketing association involved in the price support loan and only on the date on which the peanuts were delivered by the producer as collateral for a price support loan. Such sales are for the account of CCC.

(3) *Handler requirements.* For each "immediate buyback," the handler shall:

(i) Act for the marketing association by making a price support advance to the producer at the additional loan rate and in the same manner that would be applicable if an "immediate buyback" were not involved;

(ii) If applicable, use such handler's funds to pay to the producer any premiums that the parties had agreed upon in order to effect the delivery of such peanuts;

(iii) Pay for the peanuts by a check made payable to CCC. Such check must be from the handler's funds and in an amount equal to the quota loan value of the peanuts plus any handling charges; and

(iv) Transmit the handler's check and the applicable form ASCS–1007 to the marketing association by midnight of the third workday (excluding Saturdays, Sundays, and Federal holidays) following the day the peanuts were inspected.

(4) *Domestic edible use.* The handler's check and the applicable form ASCS–1007 will identify the peanuts as additional peanuts that may be used for domestic edible use.

(5) *Loan pool credit.* Irrespective of the segregation of such peanuts, the receipts from the "immediate buyback" sale will be credited to the additional loan pool for Segregation 1 peanuts and the peanuts will be treated as Segregation 1 peanuts for pool accounting purposes.

(6) *Loan pool participation.* If Segregation 2 or Segregation 3 peanuts are purchased by a handler under the "immediate buyback" provisions, the producer of such peanuts shall participate in the Segregation 1 additional loan pool in the same manner as would apply if such peanuts had been Segregation 1 peanuts.

(b) *Purchase of quota or additional loan peanuts.* Quota loan peanuts, or additional loan peanuts that were not purchased by the handler under the "immediate buyback" provisions, may be bought for domestic edible use in accordance with this paragraph on an in-grade and in-weight basis.

(1) *In-grade and in-weight purchases.* A handler may purchase loan peanuts, either quota or additional, on an in-grade and in-weight basis for domestic edible use:

(i) Under terms and conditions established by the marketing association and CCC;

(ii) If such peanuts are eligible for domestic edible use; and

(iii) If such peanuts are stored in a warehouse that is operated by such handler.

(2) *Pricing.* Except with respect to "immediate buybacks," as provided for in this section, the price for peanuts purchased on an in-grade and in-weight basis shall be determined by the marketing association or CCC, as applicable, for the account of CCC, but shall not be less than the applicable carrying charges plus, with respect to each lot of peanuts purchased:

(i) 105 percent of the quota loan value that was or would be applicable to the quantity of loan peanuts in such lot, if paid for not later than December 31 of the marketing year; or

(ii) 107 percent of the quota loan value that was or would be applicable to the quantity of loan peanuts in such lot, if paid for after December 31 of the marketing year.

Subpart D—Handling Contract Additional Peanuts—General Provisions

§ 1446.401 Contracts for additional peanuts for crushing or export.

An approved handler may contract with a producer to deliver additional peanuts for exporting or for crushing. In order to be valid, the contract must meet the eligibility requirements in this section and must be approved by the county committee that serves the county in which the producing farm is located for administrative purposes.

(a) *Contract form.* In order to be approved by the county committee, the contract must be completed on form CCC-1005, Handler Contract With Producers for Purchase of Additional Peanuts for Crushing or Export, prior to submitting the contract for approval. The marketing association will provide a form CCC–1005 to each approved handler. The form may be duplicated by the handler in accordance with instructions that shall be provided by CCC. The handler may use an addendum to the contract if such addendum neither negates nor conflicts with any provision on form CCC–1005.

(b) *Submitting contracts for approval*—(1) *Eligible handlers.* Only a handler who has been approved by the marketing association to handle contract additional peanuts may contract with producers to buy additional peanuts for crushing or exportation, or both.

(2) *Producer-handlers.* A person who has been approved as a producer-handler under part 1421 of this title may not contract with himself/herself to purchase contract additional peanuts that he/she may produce.

(3) *Place and time for submitting.* In order to be considered for approval, any contract between a handler and producer for the purchase of additional peanuts shall be completed and submitted:

(i) *Place.* To the county ASCS office of the county in which the farm is administratively located.

(ii) *Time.* On or before September 15 of the year in which the crop is produced; except that:

(A) Should September 15 fall on a Saturday or Sunday, or other non-workday the contract must be submitted for approval no later than the last workday immediately preceding the final contracting date.

(B) If the Executive Vice President, CCC, determines that damaging weather such as drought, hail, excessive moisture, freeze, tornado, hurricane or excessive wind, or related condition such as insect infestations, plant diseases, or other deterioration of the peanut crop, including aflatoxin, is expected to have significant national impact on peanut production, the Executive Vice President may extend nationally, by up to 15 days, the final date for submitting contracts for approval. Such announcement shall be made no later than September 5 of the year in which the crop is produced.

(c) *Contract approval*—(1) A contract between a handler and a producer for additional peanuts for crushing or export shall not be approved by the county committee, if otherwise eligible, unless the county committee has been notified by the State Executive Director that the handler has been approved to contract additional peanuts and that such handler has submitted the letter of credit that is required in accordance with the provisions in this part.

(2) In order to be approved, the following information must appear on the contract:

(i) The name and address of the operator;

(ii) The name and address of each producer sharing in the proceeds of the contract additional peanuts;

(iii) The State and County code, and farm number of the farm on which the additional peanuts are to be produced;

(iv) The name, address, and registration number of the handler;

(v) The pounds of Segregation 1, Segregation 2, and/or Segregation 3 peanuts that are contracted;

(vi) The final contract price to be paid by the handler and shown as a set percentage of the loan rate for quota peanuts of the type indicated on the contract; except that, such final contract price shall not be less than the additional loan rate for the type of peanuts indicated on the contract;

(vii) A disclosure by the producer of any liens or encumbrances on the peanuts;

(viii) The signature of the farm operator;

(ix) The signature of each person having an interest as a producer in the contract additional peanuts that are produced on the farm;

(x) The signature of the handler or the authorized agent of the handler; and

(xi) A prohibition against changing the price.

(3) The county committee, or a person designated in writing by the county committee, shall approve each form CCC–1005 that conforms with the provisions in this section.

§ 1446.402 Approval as handler of contract additional peanuts.

(a) *General.* By June 15 preceding the beginning of the marketing year in which such additional peanuts will be acquired, any handler who plans to acquire contract additional peanuts in accordance with this part for crushing or for exporting must:

(1) *Application.* File an application with each marketing association that serves the area in which such handler plans to acquire contract additional peanuts. Such application:

(i) *Form.* Must be on a form or in a format provided by the marketing association.

(ii) *Method of supervision.* Must indicate the method of supervision, physical or nonphysical, selected by the handler for purposes of accounting for

the disposition of any contract additional peanuts acquired by such handler.

(2) *Evidence of adequate assets and adequate facilities.* Provide evidence that is acceptable to the marketing association and CCC that such handler has:

(i) *Assets.* Adequate assets to assure compliance with the provisions in this part with respect to such handler's obligation to crush or export contract additional peanuts acquired by such handler; and

(ii) *Facilities.* Adequate facilities to handle the acquisition and disposition of any contract additional peanuts acquired by such handler.

(3) *Letter of credit for prior crop years.* Increase or extend the letter of credit applicable for a previous crop year in an amount necessary to cover any outstanding marketing penalties on peanuts produced in such crop year which are still under the appeal process or are unpaid. This requirement is in addition to any letter of credit requirement for the current year.

(b) *Approval.* The marketing association, acting on behalf of CCC, shall approve, in accordance with this part, each application that is timely filed in accordance with this section, or is filed by such extended time as may be approved by the Executive Vice President, CCC, provided that in either case, the applicant:

(1) Has selected a method of supervision;

(2) Has a U.S. address;

(3) Has provided evidence of adequate assets and adequate facilities to assure compliance with the provisions in this part with respect to the disposition of contract additional peanuts; and

(4) Has provided any increased letter of credit as provided in paragraph (a)(3) of this section.

(c) *Cost of supervision.* The handler shall bear the cost of supervision irrespective of the method of supervision such handler has chosen.

§ 1446.403 Letter of credit.

(a) *Certification and financial guarantee (letter of credit)*—(1) *Certification.* In order to establish a letter of credit, each handler must certify to the applicable marketing association the quantity of additional peanuts the handler expects to contract for delivery by producers that are served by such marketing association. The certified poundage will be the basis for establishing the letter of credit for the applicable crop. If the certified poundage is less than the actual contracted poundage, the letter of credit required of the handler for the next marketing year shall be subject to increase, as provided in this section.

(2) *Letter of credit.* The handler must present an irrevocable letter of credit to each marketing association that serves the area in which a handler plans to contract or otherwise acquire contract additional peanuts. Such letter of credit shall be issued in a form and by a bank which is acceptable to CCC and except as provided in paragraph (d) of this section shall be submitted to the appropriate marketing association not later than July 31 and before marketing cards will be issued to producers for contract additional peanuts. Unless the provisions of paragraphs (b) and (c) of this section are applicable, the amount of the letter of credit for each area shall be equal to the amount determined by multiplying 140 percent of the national average quota price support rate by, for a handler selecting nonphysical supervision, 8 percent, or, for a handler selecting physical supervision, 5 percent, of the larger of:

(i) Ninety percent of the handler's contracted pounds as recorded on contracts approved by the county committee for the preceding marketing year and in the marketing area; or

(ii) The amount of additional peanuts the handler estimates will be contracted with producers, as certified to the marketing association, for delivery during the current marketing year and in that marketing area.

(b) *Increase in letter of credit*—(1) The amount of the letter of credit required under paragraph (a) of this section shall be increased for any handler:

(i) Who has a poor performance record, as evidenced by previous penalty assessments for violations of the provisions of this part; or

(ii) Who is associated, as determined by CCC, with another handler who has such a record; or

(iii) Whose total acquisition of farmers stock peanuts during the preceding marketing year from purchases of contract additional peanuts exceeded, by more than 3.0 percent, the pounds on which the letter of credit for the preceding marketing year was based. Nothing in this part shall prohibit CCC from demanding an increase in the letter of credit for the current year in the event the handler has significantly underestimated the handler's purchases for the current year.

(2) The increase in the letter of credit shall be determined in accordance with the guidelines set forth in paragraph (c) of this section.

(c) *Guidelines for increasing letters of credit*—(1) *Increased letter of credit due to history of program violation.* If the handler and/or related entity was assessed penalties for program violations for any of the previous three crop years, the percentage of the pounds of contracted peanuts to which the increase specified in paragraph (b) of this section shall be applied, shall be increased by 6 percent for each year of the three-year period in which such a penalty was assessed, except that:

(i) Such increase for a particular crop year shall be 3 percent rather than 6 percent if, for all violations for that crop year:

(A) The penalties were reduced by the Executive Vice President, CCC, and paid; or

(B) Less than 120 days, or such further period as established by the Executive Vice President, have passed since the penalty assessment was made by the CCC Contracting Officer.

(ii) Previous penalty assessments, other than assessments for violations that involve the importation of additional peanuts, or the failure to properly dispose of additional peanuts, which have been paid shall not be considered as part of the violation history for any crop year if the total violations for such crop year by the handler, and related individuals or entities, involved less than 100,000 pounds of peanuts.

(2) *Waiver of increase.* Notwithstanding (c)(1) of this section, at the discretion of the Executive Vice President, CCC, the increase required under this section may be waived upon the presentment of adequate security as determined acceptable by the Executive Vice President, CCC.

(3) *Inaccurate certification of additional peanuts acquired.* In addition to the increase required by paragraph (c)(1) of this section, if the actual purchase of contract additional peanuts for the previous marketing year exceeds, by more than 3.0 percent, the poundage on which the previous marketing year's letter of credit was based, the pounds determined in accordance with paragraphs (a)(2) (i) and (ii) of this section shall be increased by an amount equal to 3 times the amount of such excess.

(4) *Basis for determining letter of credit amount.* Any letter of credit determination under this section shall be based upon the facts as they exist on June 1 of the calendar year in which the letter of credit is to be supplied.

(5) *Unpaid interest.* References to unpaid penalties in this section shall include associated unpaid interest and unpaid late payment charges.

(d) *Extension of time for filing letter of credit.* Notwithstanding any other

provision of this section, upon a request from a handler, the Executive Vice President, CCC, may extend the time for filing of a required letter of credit if such an extension is considered necessary in order for the handler to have sufficient time to acquire necessary financing.

§ 1446.404 Transfer of contracts prior to delivery.

An approved contract, by which a handler is to purchase additional peanuts from a producer, may not be sold, traded, or assigned except as provided in this section.

(a) *Contract transfer and delivery of contracted peanuts to other handlers*—(1) If a handler is otherwise unable to perform under any contract with a producer for the purchase of additional peanuts due to conditions beyond the handler's control, the handler and the producer may agree to the delivery of the peanuts to another handler under the terms of the original contract or under modified terms except that, the price, quantity, type, segregation or farm number as shown on the original contract may not be changed. Conditions considered beyond the handler's control may include, but are not limited to, insolvency, bankruptcy, death, or destruction of warehouse facilities.

(2) A contract for additional peanuts shall not be transferred to another handler without the prior written approval of the Deputy Administrator. Such transfer shall be approved by the Deputy Administrator only if the Deputy Administrator determines that such transfer will not impair the effective operation of the peanut program.

(b) *Contract transfer and transfer of delivery obligations to other producers.* If a producer is unable to fully perform the terms of a contract with a handler for the purchase of additional peanuts due to conditions beyond the producer's control or other conditions as may be prescribed by CCC, the handler and the producer or the producer's successor-in-interest may agree to a modification of the contract or to the substitution of another producer either under the original terms of the contract or under modified terms that do not change the original contract price and quantity. Conditions considered to be beyond the producer's control may include, but are not limited to, farm reconstitution in some cases (combinations and divisions), insolvency, bankruptcy, or death but do not include failure to produce the contracted amount from the planted acreage of peanuts due to natural disaster or related conditions or failure to plant sufficient acreage to produce the contracted quantity. Such modifications or transfers of contract obligations shall not be valid without the prior written approval of the Deputy Administrator. A transfer shall be approved only if the Deputy Administrator determines that such modifications or such transfer will not impair the effective operation of the peanut program.

(c) *County committee approval.* Contract modifications other than changes in producer, owner or operator, or changes permitted by this section, may not be approved by the county committee.

§ 1446.405 Inspection of contract additional peanuts.

The type and quality of each lot of contract additional peanuts delivered under contract shall be determined by the Federal-State Inspection Service when such peanuts are delivered by a producer. To be valid, the inspection results shall be recorded on form ASCS-1007 and signed by the inspector.

§ 1446.406 Commingled storage of contract additional peanuts.

(a) *Commingled storage.* A handler may commingle quota loan, quota commercial, additional loan, and contract additional peanuts during storage. In such case the peanuts must be inspected on a farmers stock basis before such peanuts are placed in storage.

(b) *Accounting for commingled peanuts.* Contract additional peanuts in commingled storage shall be accounted for on a:

(1) Dollar value basis under physical supervision.

(2) TKC basis under nonphysical supervision.

§ 1446.407 Handler transfer of contract additional peanuts or transfer of disposition credit.

(a) *Liability and credit for export or crushing.* Except as permitted by this section, a handler shall not:

(1) Sell, assign or otherwise transfer liability for exporting or crushing contract additional peanuts to other handlers, or

(2) Sell, assign, or otherwise transfer credits for exporting or crushing contract additional peanuts to other handlers.

(b) *Transfer of farmers stock contract additional peanuts*—(1) A one-time transfer of farmers stock contract additional peanuts may be made between the entity shown as applicant 1 and the entity shown as applicant 2 on the form ASCS-1007 for the peanuts.

(2) Such transfers shall be made within the same marketing area unless approved otherwise by the marketing association or the Deputy Administrator, and in accordance with instructions issued by CCC.

(3) Before the transfer may be approved, the receiving handler's letter of credit shall be amended by an amount that will cover the amount of peanuts transferred and the transferring handler must submit to the marketing association for approval, a form CCC-1006, covering any proposed transfer of farmers stock peanuts.

(4) Such approval must be obtained before any physical movement of the peanuts from the buying point.

(5) The transfer of peanuts as farmers stock peanuts after sale by the producer shall not be permitted unless approved in writing by CCC or the marketing association.

(c) *Transfer of peanuts for processing into products*—(1) Handlers may transfer contract additional peanuts and the liability for the export of contract additional peanuts to a processor of peanut products either as:

(i) Milled peanuts; or

(ii) Farmers stock peanuts under the provisions of paragraph (b) of this section.

(2) Such transfer shall be made in accordance with the provisions of this part.

(d) *Transfer of export credit for peanuts which have been exported.* Credit for peanuts exported under the provisions of this part will be given to the applicant shown on the form FV-184-9 for the lot of peanuts that has been exported; Except that:

(1) If a bill of sale and a disclaimer to the credit for export are submitted with the applicable form FV-184-9, the credit may be claimed by the person to whom the credit was assigned.

(2) If documentation of export for a lot of peanuts other than the one purchased for export is submitted, credit may be given only if the form FV-184-9 and sales contract for the original lot is included with the documentation for the exported lot.

(e) *Transfer of credit for crushing.* Disposition credit earned for peanuts crushed in accordance with the provisions of this part and under the supervision of the marketing association may be assigned to another person if a disclaimer to the credit for crushing is submitted with the applicable form FV-184-9.

§ 1446.408 Decreasing or drawing upon a letter of credit.

(a) *Decreasing the letter of credit to reflect TKC obligation.* Any existing irrevocable letter of credit that has been presented by a handler may be

decreased after January 31 of the calendar year following the year in which the peanuts were produced if the final TKC obligation determined for such handler, when converted to a farmers stock peanuts basis by dividing the TKC pounds by 0.795 for runner peanuts; 0.75 for Spanish peanuts; 0.735 for Virginia peanuts; or 0.77 for Valencia peanuts, less than the amount that would be applicable for such handler and for such amount of farmers stock peanuts as determined in accordance with § 1446.403 of this part. The letter of credit may be decreased to the amount so determined.

(b) *Adjusting the letter of credit for acceptable proof of disposition.* The handler shall deliver to the marketing association satisfactory evidence as described in this part, to verify that contract additional peanuts have been exported or otherwise disposed of in accordance with the provisions of this part. On January 31, of the calendar year following the year in which the peanuts were produced, and on March 31, May 31, and monthly thereafter of such following year, the marketing association may permit a reduction of the letter of credit if the existing letter of credit exceeds 140 percent of the national average quota price support rate for the applicable crop times the farmers stock equivalent of the remaining TKC obligation as determined in the same manner as provided in paragraph (a) of this section.

(c) *Drawing against the letter of credit*—(1) Evidence of export and disposition as required in this part, must be submitted no later than 30 days after the final date for export as established in this part, or 15 days prior to the expiration of the letter of credit, whichever occurs first. If satisfactory evidence is not presented by such date, CCC may authorize the marketing association to draw against the letter of credit and apply the amount toward any penalty due for failure to properly dispose of, or account for, contract additional peanuts in accordance with this part.

(2) Any draw down against a letter of credit shall not compromise any penalty due CCC if the letter of credit is insufficient to cover the full amount of the penalty or prevent any re-determination of whether there has been a proper disposition of and/or accounting for peanuts.

§ 1446.409 Access to facilities.

A handler, by entering into contracts to receive contract additional peanuts, or any person or firm otherwise receiving contract additional peanuts, shall be considered to have agreed that any authorized representative of CCC or the marketing association:

(a) May enter and remain upon any of the premises of the handler when such peanuts are being received, shelled, cleaned, bagged, sealed, weighed, graded, stored, milled, blanched, crushed, packaged, shipped, sized, processed into products, or otherwise handled;

(b) May inspect such peanuts and the oil, meal, and other products thereof; and

(c) May inspect the premises, facilities, operations, books, and records of the handler to the extent necessary to determine that such peanuts have been handled in accordance with this part.

§ 1446.410 Disposition date.

(a) *Final disposition date.* To avoid a penalty as provided in this part, a handler shall dispose of all contract additional peanuts, in accordance with the provisions in this part, by the final disposition date. Except as provided in paragraph (b) of this section, the final disposition date shall be September 15 of the year following the calendar year in which the crop was grown.

(b) *Extension of final disposition date.* The final disposition date for an individual handler may be extended by the marketing association, with concurrence of the Director, TPD, to November 30 of the year following the calendar year in which the crop was grown if, by August 15 preceding the final disposition date, the handler files a written request with the marketing association that:

(1) Specifies the number of pounds for which an extension is requested; and

(2) Fully explains why the handler will be unable to meet the final disposition date provided in paragraph (a) of this section.

§ 1446.411 Export provisions.

(a) *Export to a U.S. Government agency.* Except for the exportation of raw peanuts to the military exchange services of the United States for processing outside the United States, the export of peanuts in any form by or to a United States Government agency shall not be considered as export to an eligible country, but shall instead be considered a domestic edible use of such peanuts. However, sales to a foreign government which are financed with funds made available by a United States agency, such as the Agency for International Development or CCC, will not be considered sales to a United States Government agency if the peanuts are not purchased by the foreign buyer for transfer to an agency of the United States.

(b) *Export to an eligible country.* All contract additional peanuts which are not crushed domestically (including approved processing into flakes) and which are eligible for export shall be exported in accordance with the provisions of this part to an eligible country as peanuts or peanut products.

§ 1446.412 Evidence of export.

To receive credit toward an obligation to dispose of contract additional peanuts in accordance with this part, the handler must:

(a) *Certified statement.* Provide a statement signed by the handler specifying the name and address of the consignee and certifying that the peanuts have been exported.

(b) *Documentation.* Not later than 30 days after the final disposition date provided in this part, furnish to the marketing association or CCC the following documentary evidence of the export of peanuts or peanut products:

(1) *Export by water.* For the peanuts that were exported by water, a nonnegotiable copy of an on-board ocean bill of lading. Such bill of lading must have been signed on behalf of the carrier and must include:

(i) The date and place of loading such peanuts on-board the vessel;

(ii) The weight of the peanuts, peanut meal, or products exported;

(iii) The name of vessel;

(iv) The name and address of the U.S. exporter;

(v) The name and address for the foreign buyer;

(vi) The country of destination; and

(vii) For peanut meal which is unsuitable for use as feed because of contamination by aflatoxin, the statement required on the bill of lading in accordance with this part.

(2) *Export by rail or truck.* For peanuts that were exported by rail or truck:

(i) A copy of the bill of lading that must include the weight of the peanuts or peanut meal or products exported, and for peanut meal that is unsuitable for feed use because of contamination by aflatoxin, the statement required on the bill of lading in accordance with this part; and

(ii) A copy of the Shipper's Export Declaration or, in the alternative, a U.S., Canadian or Mexican Customs' document which shows entry into the country; or

(iii) Other documentation that is acceptable to the marketing association.

(3) *Export by air.* For peanuts that were exported by air:

(i) A copy of the airway bill that must include:

(A) The weight of the peanuts, peanut meal, or peanut products exported;

(B) The consignee and shipper; and

(C) For peanut meal that is unsuitable for feed use because of contamination by aflatoxin, the statement required on the airway bill in accordance with this part: or

(ii) Other documentation that is acceptable to the marketing association.

§ 1446.413 Disposal of meal contaminated by aflatoxin.

All meal produced from peanuts which are crushed domestically and found to be unsuitable for use as feed because of contamination by aflatoxin shall be disposed of for non-feed purposes only. If the meal is exported, the export bill of lading shall reflect the analysis of the lot by inclusion and appropriate completion thereon the following statement showing the range and average aflatoxin content (where "_____" represents the determined values for such lot) as parts per billion (PPB):

"This shipment consists of lots of meal which contain aflatoxin ranging from "_____" to "_____" PPB and averaging "_____" PPB."

§ 1446.414 Processing additional peanuts into products.

(a) *Type of supervision.* A person, who plans to acquire additional peanuts from other handlers for processing into products for export, must register as a handler and choose a method of supervision in accordance with this section.

(b) *Physical supervision.* For purposes of this section, if physical supervision is chosen:

(1) Such supervision shall be conducted in accordance with provisions of this part; and

(2) The processor must provide a letter of credit to the marketing association as prescribed by this part which shall, to the extent practicable, be the same amount as the letter of credit that would be required in accordance with this part for an equal quantity of peanuts acquired by a handler who has entered into contracts for the purchase of additional peanuts and has chosen physical supervision.

(c) *Nonphysical supervision.* For purposes of this section, if nonphysical supervision is chosen:

(1) The processor shall:

(i) Provide a written agreement that is signed by a duly authorized person, in which the processor agrees to export additional peanuts to an eligible country in such quantities and in accordance with such procedures as are specified by this part;

(ii) Provide a letter of credit to the marketing association which shall, to the extent practicable, be the same amount as the letter of credit that would be required in accordance with this part for an equal quantity of peanuts acquired by a handler who has entered into contracts for the purchase of additional peanuts and has chosen nonphysical supervision; and

(iii) Provide to the marketing association a description of the type of product that will be processed, the type of containers, size of containers, and the standard peanut processing yield for the product.

(2) The processor shall submit proof of export to the marketing association of like kind, as determined by the marketing association, as that required by this part for exports of peanuts under nonphysical supervision.

(3) Upon verification of product yield by the marketing association, approval of the form CCC–1006, and approval of the letter of credit, a product export obligation will be established on marketing association ledgers and the processor will be notified of the quantity of product export obligation.

(4) Upon receipt of proof of export that is acceptable to the marketing association, the processor, with the concurrence of the marketing association, may reduce the letter of credit to the extent that such letter of credit exceeds the amount determined by the marketing association, in accordance with instructions issued by ASCS, to be necessary to assure compliance by the processor with the provisions in this part.

(d) *Applicability of regulations.* By registering as a handler and selecting a method of supervision in accordance with this section, a processor of peanuts shall be considered to have agreed:

(1) To perform in accordance with the provisions of this part;

(2) That the provisions of this part such as access to facilities, fraud, liens against peanuts on which penalty is due, and any other provisions that apply to a handler of additional peanuts, shall apply to the processor; and

(3) That the processor shall be considered as a handler for purposes of applying the penalty provisions of this part.

(e) *Records.* A peanut processor shall maintain records that will enable the marketing association or other representative of the Secretary to determine compliance with the provisions of this section.

§ 1446.415 Prohibition on importation or reentry of contract additional peanuts.

Neither exported contract additional peanuts nor peanut products made from additional peanuts shall be imported or reentered in commercial quantities by anyone into the United States in any form. If contract additional peanuts or peanut products made from such peanuts are imported or reentered into the United States, the handler importing such peanuts or peanut products shall be liable for a penalty assessed in accordance with this part, for reentering contract additional peanuts.

§ 1446.416 Suspension of restrictions on imported peanuts.

Notwithstanding any other provision of this part, if the President issues a proclamation under section 22 of the Agricultural Adjustment Act of 1933, as amended, temporarily suspending restrictions on the importation of peanuts, a handler, with the written consent of the producer and CCC, may purchase additional peanuts from any producer who, in accordance with this part, contracted with the handler to deliver additional peanuts to such handler and may use such peanuts for sale for domestic edible use without incurring any marketing penalty for failure to crush or export such peanuts. However, the maximum quantity of peanuts that may be purchased by such handler in accordance with this provision of this section is the quantity of contract additional peanuts that remains undelivered by such producer under the contract. For purposes of application of this section, a proclamation temporarily increasing the import quota shall not be considered the same as a temporary suspension of restrictions on the importation of peanuts.

§ 1446.417 Loss of peanuts.

Should a handler suffer a loss of peanuts as a result of fire, flood or any other condition beyond the control of the handler, the portion of such loss that may be attributed to contract additional peanuts, as determined by the marketing association shall not be greater than an amount determined by dividing the total of the contract additional peanuts acquired by the handler during the year by such handler's total peanut purchases for the year and multiplying the result by the quantity for which acceptable proof of loss has been furnished to the marketing association. Such attribution shall take into account any dispositions of peanuts that occurred prior to the loss of the peanuts for which the attribution is made.

Subpart E—Handling Contract Additional Peanuts-Physical Supervision

§ 1446.501 Accounting for contract additional peanuts acquired under physical supervision.

(a) *Commingled storage*—(1) *General.* For a handler operating under physical supervision, contract additional peanuts placed in commingled storage must be accounted for on a dollar value basis less a one time adjustment for shrinkage for each crop.

(2) *Shrinkage.* For peanuts that are graded out and accounted for:

(i) Before February 1 of the applicable marketing year, the adjustment of the dollar value for shrinkage shall be:

(A) 3.5 percent for Virginia-type peanuts; and

(B) 3.0 percent for all other peanuts.

(ii) After January 31 of the applicable marketing year, the adjustment of the dollar value for shrinkage shall be:

(A) 4.0 percent for Virginia-type peanuts; and

(B) 3.5 percent for all other peanuts.

(3) *Records.* The handler shall maintain a copy of each form ASCS–1007 that was issued for any peanuts that are placed in commingled storage and that is issued for any peanuts removed from storage.

(b) *Supervised identity preserved storage.* For a handler operating under physical supervision, contract additional peanuts may be stored identity preserved and may be accounted for by disposing of the entire contents of the peanuts in each identity preserved warehouse in accordance with this part and under the supervision of a representative of the marketing association. In such case:

(1) All peanuts that are loaded into each warehouse must be inspected as farmers stock peanuts and must be loaded under the supervision of the marketing association.

(2) At the end of each day in which peanuts are placed in or removed from the warehouse, the warehouse must be sealed by a representative of the marketing association.

(3) Each warehouse seal may be removed only by a representative of the marketing association.

(4) The marketing association shall be reimbursed by the handler for all expenses of providing a representative to supervise the loading and unloading of each warehouse.

(c) *Nonsupervised identity preserved storage*—(1) *Conditions.* For a handler operating under physical supervision, contract additional peanuts may be stored identity preserved without supervision at the time of loading the peanuts into each warehouse, but only if:

(i) All peanuts that are loaded into a warehouse are inspected prior to loading into such warehouse and a form ASCS–1007 prepared for each lot that is inspected;

(ii) The entire contents of each warehouse will be removed and disposed of in accordance with this part and under supervision of a representative of the marketing association; and

(iii) The peanuts are accounted for on a dollar value basis except that shrinkage, in the amounts provided for in paragraph (c)(2) of this section, will be allowed if the dollar value of the peanuts that are loaded out of each warehouse is less than the dollar value of the peanuts that were loaded into such warehouse.

(2) *Shrinkage.* For peanuts that are graded out and accounted for:

(i) Before February 1 of the applicable marketing year, the adjustment of the dollar value for shrinkage shall be:

(A) 3.5 percent for Virginia-type peanuts; and

(B) 3.0 percent for all other peanuts.

(ii) After January 31 of the applicable marketing year, the adjustment of the dollar value for shrinkage shall be:

(A) 4.0 percent for Virginia-type peanuts; and

(B) 3.5 percent for all other peanuts.

(3) *Records.* The handler shall maintain a copy of each form ASCS–1007 that is issued for any peanuts that are placed in nonsupervised identity preserved storage and that is issued for any peanuts that are removed from such storage.

§ 1446.502 Physical supervision of contract additional peanuts.

(a) *Supervision.* A handler who has chosen to operate under physical supervision shall make arrangements that are satisfactory to the marketing association for representatives of the marketing association to conduct onsite supervision of domestic handling of contract additional peanuts including storing, shelling, crushing, cleaning, milling, blanching, weighing, and shipping.

(b) *Final dates for scheduling supervision.* Contract additional farmers stock peanuts shall be scheduled for supervision by the marketing association during the normal marketing period but not later than August 15 of the calendar year following the year in which the crop was grown, unless prior approval of a later date has been made by the marketing association.

(c) *Notifying the marketing association.* Before moving or processing any contract additional peanuts, the handler or an agent of the handler shall notify the marketing association of the time such operation will begin and the approximate period of time required to complete the operation. When a plant is not currently under supervision, the handler shall give at least five working days of advance notice to the marketing association so that supervision can be arranged.

(d) *Processing.* The identical peanuts identified at time of load-out as contract additional peanuts shall be shelled or otherwise milled, crushed, or shelled and crushed under supervision of the marketing association as a continuous operation separate from other peanuts. Shelled peanuts shall be identified with positive lot identity tags before being stored and moved for crushing, exportation, or processing into peanut products to be exported. Except as otherwise authorized by the marketing association, such peanuts will be considered as having been crushed or exported only if positive lot identity has been maintained in the following manner:

(1) *Transportation.* The peanuts shall be transported from storage locations in a covered vehicle such as a truck or railroad car. The vehicle shall be sealed unless the marketing association determines that identity of the peanuts can be maintained without sealing.

(2) *Storage.* Farmers stock peanuts shall be stored in a separate building(s) or bin(s) which can be sealed or which the marketing association otherwise determines will satisfactorily maintain lot identity. Milled peanuts shall be stored in such a manner that the marketing association, under procedures issued by CCC, may make periodic inventory verification of the contract additional lots that are shown on marketing association records as being in the storage facility. The handler shall furnish to the marketing association the name and location of the storage facilities in which the contract additional peanuts are located.

§ 1446.503 Disposition requirements under physical supervision.

(a) *Methods of disposition.* Except under the provisions of § 1446.504 of this part applicable to substitution, the identical contract additional farmers stock peanuts and milled peanuts that are shelled under supervision of the marketing association and formed into lots shall be disposed of, in accordance with the provisions of this part that are applicable to contract additional peanuts and to physical supervision, by

domestic crushing or by export to an eligible country as follows:

(1) All kernels may be crushed domestically under supervision of the marketing association representative; or

(2) All kernels may be exported for crushing, if fragmented; or

(3) All kernels that meet the standards established for the domestic market under the Marketing Agreement No.146 may be exported and the remaining kernels crushed domestically under supervision of the marketing association representative; or

(4) All of the peanuts may be exported as farmers stock peanuts, provided that such peanuts meet the standards established for the domestic market under the Marketing Agreement No. 146 and are positive lot identified; or

(5) The peanuts may be exported to an eligible country as peanut products if such products are produced domestically; or

(6) The peanuts may be exported as milled or in-shell peanuts if they meet the edible export standards established for the domestic market under the Marketing Agreement No. 146; or

(7) The peanuts may be considered exported or crushed if it is determined by CCC that such peanuts have been destroyed or otherwise made unsuitable for any commercial purpose.

(b) *Peanuts diverted or transhipped.* Contract additional peanuts, or peanut products made from contract additional peanuts, that are diverted or transshipped to any country other than an eligible country shall not be credited in the handler's favor against the handler's obligation to crush or export such peanuts.

§ 1446.504 Substitution of quota and additional peanuts.

(a) *Substitution of quota peanuts which have been exported—(1) Farmers stock peanuts.* With prior notification to and approval of the marketing association, farmers stock quota peanuts that have been exported from the same crop, type, quality, and area may be substituted for additional peanuts that otherwise would have to be exported in accordance with this part to avoid a penalty.

(2) *Milled peanuts.* With prior notification to and approval by the marketing association, peanuts that are milled under supervision of the marketing association may be used to replace, in domestic edible use, quota peanuts that have been exported to an eligible country from the same crop, type, area, and of the same grade as recognized by the Peanut Administrative Committee (PAC) for edible quality grades. Such grades shall be established at the time the peanuts are milled and the lot is formed unless CCC directs otherwise in writing. The quota peanuts that are exported, for which substitution is requested, must have been positive lot identified and otherwise handled as additional peanuts under the supervision of the marketing association.

(b) *Use of additional peanuts for domestic edible uses prior to substitution—(1) General requirements.* Additional peanuts may be used for domestic edible use with prior notification and approval of the marketing association and upon presentation to the marketing association of an irrevocable letter of credit in an amount that is determined in the same manner as such handler's initial letter of credit for the quantity of peanuts that will be substituted. Such letter of credit is in addition to the letter of credit required in accordance this part as a condition for approval of contracts for additional peanuts. Such additional letter of credit for substitution shall be issued in a form and by a bank which is acceptable to CCC.

(2) *Submitting evidence of export.* The handler subsequently shall dispose of a like amount of quota peanuts in the manner prescribed in this part for contract additional peanuts. If the quota peanuts are exported, the handler shall subsequently deliver to the marketing association satisfactory evidence that a like amount of quota peanuts of the same type and of a similar grade has been exported. Such evidence must be submitted no later than the earlier of:

(i) 30 days after the final date for export as established in accordance with this part; or

(ii) 15 days prior to the expiration of the letter of credit.

(3) *Failure to timely submit evidence of export.* If satisfactory evidence is not presented by such date determined in (b)(2) of this section, CCC may authorize the marketing association to draw against the letter of credit for the full amount of the penalty which would otherwise be due for failure to dispose of contract additional peanuts in accordance with this part.

Subpart F—Handling Contract Additional Peanuts-Nonphysical Supervision

§ 1446.601 Disposition requirements under nonphysical supervision.

(a) *Disposition requirement.* With respect to any marketing year, a handler who has selected nonphysical supervision shall account for the disposition of any contract additional peanuts acquired by such handler by providing evidence that is satisfactory to the marketing association of the quantity of peanuts by peanut type that are crushed or exported by such handler in each of the following kernel categories:

(1) SS kernels;

(2) SMK's; and

(3) AO kernels.

(b) *SS kernels.*—(1) For each lot of contract additional peanuts acquired by such handler for which a deduction would have been applicable for SS kernels under the applicable price support loan schedule, deduct, from the percentage of SS kernels in such lot of peanuts, a number of percentage points equal to the maximum percentage of SS kernels that a lot of peanuts could contain without having a deduction for SS kernels under the applicable price support loan schedule and multiply the result by the total weight of the TKC content of the lot, excluding the weight of the LSK's in such lot.

(2) Determine separately, for each type of peanuts acquired by such handler, the total of the results obtained in paragraph (b)(1) of this section for all lots of contract additional peanuts acquired by such handler.

(3) For each type of peanuts acquired by such handler, multiply the result determined in paragraph (b)(2) of this section by 0.955 in order to provide an allowance for shrinkage. The result is the minimum quantity of SS kernels of peanuts of the respective type that shall be crushed or exported by such handler.

(c) *SMK and SS kernels.* (1) Determine, by type, the total of the quantity of SMK and SS kernels in the lots of contract additional peanuts acquired during the marketing year by such handler.

(2) From the total determined in paragraph (c)(1) of this section, deduct the amount determined in paragraph (b)(2) of this section.

(3) For each type of peanuts acquired by such handler, multiply the results obtained in (c)(2) of this section by 0.955. The result is the minimum combined quantity of SMK's and SS kernels (excluding the quantity of SS kernels required to be crushed or exported as determined in paragraph (b)(3) of this section) of the respective type that shall be exported or crushed by such handler.

(d) *AO kernels.* (1) Determine, by type, the total quantity of TKC in the lots of contract additional peanuts acquired during the marketing year by such handler.

(2) From the total determined in paragraph (d)(1) of this section, deduct:

(i) The amount of SS kernels determining in paragraph (b)(2) of this section; and

(ii) The combined SMK's and SS kernels determined in paragraph (c)(2) of this section.

(3) Multiply the result determined in paragraph (d)(2) of this section by 0.955. The result is the total of the AO kernels of the respective type that shall be exported or crushed by such handler.

(e) *Substitution prohibited.* Disposition credit shall not be granted:

(1) To the obligation to export or crush SS kernels and SMK for any amount of AO kernels that may have been exported or crushed in excess of the quantity required in accordance with paragraph (d)(3) of this section.

(2) To the obligation to export or crush AO kernels for any amount of SS kernels and SMK's that may have been exported or crushed in excess of the quantity required in accordance with paragraph (c)(3) of this section.

(3) To the obligation to export or crush peanuts of a type, for a surplus amount of contract additional peanuts exported or crushed from another type.

(f) *Peanuts diverted or transhipped.* Contract additional peanuts or peanut products made from contract additional peanuts diverted or transshipped to any country other than eligible country shall not be credited in the handler's favor against the handler's obligation to crush or export such peanuts.

§ 1446.602 Disposition credit for peanuts under nonphysical supervision.

(a) *Disposition credits.* Contract additional peanuts of the same crop year and of like type shall be disposed of in accordance with the provisions of this part. Disposition shall be by domestic crushing or by export to an eligible country. Disposition credit may be granted for:

(1) Kernels that are crushed domestically under physical supervision of the marketing association representative; or

(2) Kernels that are exported for crushing, if fragmented before being exported; or

(3) Exported kernels that meet PAC standards for domestic edible use; or

(4) Peanuts that are exported as farmers stock peanuts, provided that such peanuts meet PAC standards for domestic edible use and are positive lot identified; or

(5) Peanuts that are exported to an eligible country as peanut products if such products are produced domestically in accordance with provisions of this part; or

(6) Peanuts that are exported as milled or in-shell peanuts if they meet PAC standard for domestic edible peanuts; or

(7) Peanuts that are exported as blanched peanuts; or

(8) Peanuts that are determined by the marketing association as having been destroyed or otherwise made unsuitable for any commercial purpose. In such case the peanuts shall be considered as crushed.

(b) *Requesting physical supervision of crushing for disposition credit.* Prior to August 31 of the year following the calendar year in which the peanuts were produced, or prior to November 30 if an extension to export has been granted, a handler operating under the provisions of this part with respect to nonphysical supervision may request and arrange for the marketing association to supervise the crushing of SMK, SS and AO peanuts for disposition credit for the applicable kernel type by obtaining physical supervision of the peanuts under the following conditions:

(1) *Milled peanuts.* A request to change to physical supervision for crushing milled peanuts for SMK, SS or AO credit may be made at any time prior to the final disposition date for additional peanuts for the relevant crop year. Physical supervision of milled peanuts shall be provided under the provisions of this part applicable to physical supervision of milled peanuts. The marketing association may require that positive identified lots be regraded before crushing.

(2) *Farmers stock peanuts.* A request to change to physical supervision for crushing farmers stock peanuts must be made and approved prior to the peanuts being graded out of commingled storage. In order to determine the categories, by peanut type, for the kernels that are crushed, namely SS, SMK and AO kernels, physical supervision must begin at the gradeout from commingled storage and continue through the crushing of the peanuts as required in accordance with this part for a handler who chooses physical supervision for disposition of contract additional farmers stock peanuts.

(c) *Determining disposition credit.* Disposition credit for SMK, SS and AO kernels crushed under physical supervision shall be determined for farmers stock peanuts from the applicable form ASCS–1007, and for milled peanuts from the applicable form FV–184–9.

(d) *Application of crushing credits to disposition obligation*—(1) *Peanuts meeting edible export standards.* Any peanuts that are crushed under physical supervision for disposition credit may apply pound-for-pound toward meeting the respective SMK, SS, or AO kernel obligations for the respective like peanut type and for like kernel type crushed under physical supervision.

(2) *Peanuts not meeting edible export standards*—(i) Peanuts that do not meet edible export standards because they have been graded or regraded as inedible due to aflatoxin contamination may be crushed under physical supervision and credits may be granted, for the SMK, SS and AO kernel contents of the respective type of peanuts, to the disposition obligation for like peanut type and like kernel type, except that the percentage of peanuts to which such credit will be allowed for each peanut type and kernel type shall not exceed the percentage of the total quantity of the respective type of peanuts that was purchased by the handler for the marketing year as contract additional peanuts.

(ii) Peanuts that do not meet edible export standards for any reason other than aflatoxin contamination may be crushed under physical supervision. However, such peanuts must be credited exclusively as AO kernels.

(e) *Blanching exception.* Notwithstanding any other provision of this part, a blancher may receive credit for the pre-blanching weight of SS and SMK peanuts that are blanched for export if both the blanching and the crushing of the residue are conducted under supervision of agents of CCC or the marketing association. The maximum credit that may be received shall be:

(1) The quantity of SMK and SS kernels as shown on the FV–184–9 that is submitted for proof of export for such blanched peanuts;

(2) The quantity of the residue that is crushed under physical supervision; and

(3) The pre-blanched or "redskin" weight less the quantities in paragraphs (e)(1) and (2) of this section, to the extent of such amount that the marketing association determines is reasonable and comparable with standard industry practices.

(f) *Export credits.* In order to receive export credit toward meeting a handler's obligation to crush or export additional peanuts such exported peanuts must meet the quality standard established for the domestic market under the Marketing Agreement No. 146. Export credit will be granted in accordance with this paragraph for any exported peanuts that meet such quality standards.

(1) *Credit for exporting SMK peanuts.* Credit for exporting SMK's of the same crop year, of like type, may be earned for:

(i) The total pounds in a lot of exported peanuts which meet or exceed U.S. Standard grade for U.S. No. 1; or

(ii) The total pounds, excluding splits as determined in paragraph (f)(2)(ii) of this section, in a lot of peanuts which meet PAC standards for:

(A) Whole kernel peanuts with splits, or

(B) No. 2 Virginia peanuts; or

(iii) The total pounds determined to be SMK's in a lot of exported in-shell peanuts which meet U.S. Standard grade for cleaned Virginia type peanuts in the shell.

(2) *Credit for exporting SS kernels.* Credits for SS kernels of the same crop year, of like type, may be earned for:

(i) The total pounds in a lot of exported peanuts which meet the U.S. Standard grade for splits; or

(ii) The total pounds, excluding SMK's as determined in paragraph (f)(1)(ii) of this section, in a lot of peanuts which meets PAC standards for:

(A) Whole kernel with splits, or

(B) No. 2 Virginia; or

(iii) The total pounds determined to be SS kernels in a lot of exported in-shell peanuts which meet U.S. Standard grade for cleaned Virginia type peanuts in the shell.

(3) *Export credits for contract additional peanuts processed into products for export.* To receive disposition credit for contract additional peanuts used in products for export, the shelled peanuts must be identified with positive lot identity tags before being moved for processing in accordance with provisions of this part. The peanuts shall be processed under supervision of the marketing association unless the processing handler selects to process such peanuts under nonphysical supervision.

(4) *Export credits for in-shell peanuts.* With respect to peanuts exported in-shell, in accordance with instructions issued by CCC, credits may be earned for SMK, SS or AO kernels on the respective portions of the TKC of the lot that are SMK, SS or AO kernels.

§ 1446.603 Disposition credit for peanuts in exported products made from quota peanuts.

A handler who has selected nonphysical supervision and who manufacturers peanut products from quota peanuts may export such products to an eligible country and receive disposition credit to apply to such handler's obligation to dispose of contract additional peanuts by crushing or by exporting.

(a) *Eligible peanuts.* In order to receive such credit, the quota peanuts used in such products shall be:

(1) Of the same crop year as the crop year of the contract additional peanuts for which the obligation, to crush or export, was established.

(2) Of the same type as the contract additional peanuts to which such credit shall be applied.

(b) *Handler requirements* (1) The handler, with respect to each marketing year and each area in which such handler will apply for export credit for manufactured products, shall submit a certification to the applicable marketing association:

(i) With respect to any marketing year in which such handler intends to request disposition credit for exported products made from quota peanuts, prior to requesting such disposition credit;

(ii) On a product-by-product basis; and

(iii) Of the peanut product content of peanut products manufactured by such handler for which disposition credit will be requested.

(2) Such certification of peanut product content, as required in accordance with paragraph (b)(1) of this section, must indicate by type of peanuts, with respect to each individual product, the respective portion of such peanut kernels that are:

(i) SS kernels;

(ii) SMK's;

(iii) AO kernels.

(3) If any change is made in any peanut product formula, as certified in accordance with this section, the handler shall notify the applicable area marketing association of such change within 90 days after such change is implemented.

(c) *Disposition credit.*—(1) To the extent that a handler provides satisfactory proof, to the applicable marketing association, of the export of peanut products made from quota peanuts, such handler who has complied with the provisions of paragraph (b) of this section may receive disposition credit for eligible peanuts in peanut products exported to an eligible country.

(2) Disposition credit received in accordance with paragraph (c)(1) of this section shall be prorated by type to SS kernels, SMK's and AO kernels in the same proportion as the handler certified with respect to the peanut product content in accordance with paragraph (b)(2) of this section.

(d) *Records.* Any handler who receives disposition credit under paragraph (c) of this section shall maintain records, as required in this part, to support:

(1) The accuracy of such handler's certification made in accordance with this section; and

(2) Any disposition credit that is requested by such handler in accordance with this section.

(e) *Annual review.* The marketing association or employees of TPD shall conduct an annual review of the certifications made by handlers in accordance with this section.

(f) *Inaccurate certification.* In the case of an inaccurate certification, the disposition credit shall be adjusted accordingly. Such action shall be in addition to any other remedy, including, but not limited to, any civil or criminal remedy for fraud, as may apply.

Subpart G—Penalties and Liquidated Damages

§ 1446.701 Excess marketing of quota peanuts.

A handler will be subject to a penalty for noncompliance with this part, if, as determined under this part, from any crop of peanuts, such handler markets, for domestic edible use, a larger quantity, or higher grade or quality of peanuts, than could reasonably be produced from the quantity of peanuts having the grade, kernel content, and quality of farmers stock peanuts purchased by the handler during the applicable marketing year as quota peanuts, including those peanuts purchased in accordance with the "immediate buyback" provisions of this part. In such case, the penalty will be an amount equal to 140 percent of the national average quota support rate for the applicable crop, times that quantity of farmers stock peanuts which are determined by CCC to be necessary to produce the excess quantity or grade or quality of peanuts marketed.

§ 1446.702 Peanuts ineligible for quota loan.

Any person who causes or permits peanuts that are not eligible peanuts to be pledged as collateral for a loan at the quota loan rate shall be considered to have agreed that:

(a) CCC may incur serious and substantial damage to its program to support the price of quota peanuts because such peanuts were pledged as collateral for a quota loan;

(b) The amount of such damages will be difficult, if not impossible, to ascertain exactly; and

(c) Such person shall, with respect to any ineligible peanuts placed under quota loan, pay to CCC, as liquidated damages and in addition to any penalty that is due, the difference between the quota loan rate for such peanuts and the additional loan rate that would apply to peanuts of the same type and quality, times the amount of such peanuts that

were placed under loan. It is agreed that such liquidated damages are a reasonable estimate of the probable actual damages which CCC would suffer. Such person shall pay the damages to CCC promptly upon demand in addition to penalties as may be due or assessed. Liquidated damages under this section may be reduced by CCC based upon consideration of the following factors:

(1) Whether the person causing or permitting ineligible peanuts to be placed in the loan program made a good faith effort to ensure that ineligible peanuts were not pledged as loan collateral;

(2) The degree of damage or potential damage to the price support program caused by the violation;

(3) The nature and circumstances of the violation;

(4) The extent of the violation; and

(5) Any other pertinent information.

§ 1446.703 Assessment of penalties against handlers.

(a) *Penalty liability.* A handler shall be subject to the penalty for a violation of any provision of this part including, but not limited to, any or all of the following violations:

(1) Failure to register as a handler of peanuts;

(2) Failure to examine and make entries on marketing card;

(3) Failure to keep or make available records as required by this part;

(4) Marketing excess quota peanuts, as set forth in this part, including any marketing of reentered contract additional peanuts or peanut products made from contract additional peanuts or any marketing of imported peanut products made from additional peanuts purchased from the inventory of CCC loan collateral peanuts;

(5) Failure to store and account for contract additional peanuts in accordance with the requirements of this part;

(6) Failure to export or dispose of contract additional peanuts in accordance with the requirements of this part or failure to export or crush such peanuts by the final disposition date as established in this part;

(7) Failure to obtain supervision of, or to handle properly, contract additional peanuts in the manner required by this part;

(8) Reentering or importing contract additional peanuts or products made from such peanuts as prohibited by this part;

(9) Failure to comply with any other provision of this part; or

(10) Failure to pay or timely remit marketing assessments

(b) *Penalty rate and amount.* The penalty rate for any violation of this part shall be equal to 140 percent of the national average quota support rate for the applicable crop year times the quantity of peanuts:

(1) Handled by an unregistered handler;

(2) Not properly entered on the marketing card;

(3) For which records have not been properly kept or made available;

(4) Marketed as excess quota peanuts;

(5) Not properly stored;

(6) Not properly disposed of;

(7) Not properly supervised or handled in accordance with the regulations of this part;

(8) Imported as contract additional peanuts;

(9) Determined by CCC to have been necessary to produce the quantity of peanut products which have been determined to have been made from contract additional peanuts, and imported and sold in the United States;

(10) For which marketing assessments have not been paid timely; or

(11) Otherwise involved in such other violation of this part as may occur.

(c) *Notice of assessment.* A handler shall be notified in writing of the assessment of a penalty by a CCC contracting officer. Such notice shall state the basis for the assessment of the penalty, and shall advise the handler of the handler's appeal rights under this part.

(d) *Interest liability.* The person liable for payment or collection of any penalty provided for in these regulations shall be liable also for interest thereon at a rate per annum equal to the rate of interest which was charged CCC by the Treasury of the United States on the date such penalty became due. The date on which the penalty became due shall be the date on which the penalty was first assessed.

(e) *Applicability.* The provisions of this section are in addition to other remedies provided for by this part or other provisions of law.

§ 1446.704 Appeals and requests for reconsideration and reduction.

(a) *Appeals.* A handler who is dissatisfied with a penalty assessed by the CCC contracting officer pursuant to this part may file a written request for reconsideration of the assessment. Such request must be made to the CCC contracting officer within 15 days after the date of the notice of assessment. If the handler is dissatisfied with the determination of the contracting officer with respect to the reconsideration, the handler may appeal such determination by submitting a written notice of appeal to the Executive Vice President, CCC, within 15 days after the issuance of such determination by the contracting officer. Except as otherwise provided herein, such appeal shall be conducted in accordance with the appeal regulations set forth in part 780 of this title.

(b) *Request for reductions of penalty*—(1) *Form of request.* A handler may request a reduction in the amount of the penalty which has been assessed. Such request shall be treated as an appeal under paragraph (a) of this section, and must comply with the requirements of that paragraph. The handler may simultaneously contest liability for the penalty and, in the alternative, request that the penalty be reduced.

(2) *Reduction criteria.* A penalty assessed under this part may be reduced if CCC determines that:

(i) The violation for which the penalty was assessed was minor or inadvertent;

(ii) A reduction in the amount of the penalty would not impair the effective operation of the peanut program; and

(iii) The assessment of penalty was not made for failure to export contract additional peanuts.

(3) *Reduction limits*—(i) If the reduction criteria in paragraph (b)(2) of this section has been met, the Executive Vice President, CCC, may reduce the penalty by such amount as the Executive Vice President, CCC, considers appropriate (including a full reduction of the entire penalty) taking into account the severity of the violation and the violation history of the handler.

(ii) If one or more of the criteria in paragraphs (b)(2) (i) or (ii) of this section has not been satisfied and the remaining criteria has been satisfied, the penalty shall not be reduced to less than an amount which is equal to 40 percent of the national average quota support rate for the applicable crop year times the quantity of peanuts involved in the violation.

(iii) There shall be no limitation on the amount by which an assessment of liquidated damages may be reduced.

§ 1446.705 Statutory liens against peanuts.

(a) *Lien on peanuts.* Until the amount of any penalty which is imposed upon a handler or other person in accordance with this part is paid, a lien shall exist in favor of the United States for the amount of the penalty. Such lien shall apply on the peanuts with respect to which such penalty is incurred and on any other peanuts purchased or otherwise acquired in the same or subsequent marketing year in which the

person liable for payment of such penalty has an interest.

(b) *Debt record.* The lien specified in paragraph (a) of this section shall be considered to attach at the time the penalty is entered on the debt records which shall be maintained for this purpose by the marketing associations, unless an earlier time is prescribed by law.

(c) *List of peanut marketing penalty debts.* Each marketing association shall maintain a debt record for all handlers indicating the amounts due from each handler. This list will be available for examination upon written request to the marketing association by any interested party.

§ 1446.706 Schemes and devices.

If CCC or the marketing association, with approval of the CCC, determines that a handler has knowingly adopted any scheme or device which tends to defeat the purpose of the regulations of this part or has made any fraudulent representation, or has misrepresented any fact affecting a program determination, such handler will be subject to a penalty which shall be assessed in such manner as is determined will correct for such scheme, device, fraud, or misrepresentation.

Subpart H—Recordkeeping, Reporting and Paperwork Reduction

§ 1446.801 Recordkeeping and reporting requirements.

(a) *Persons required to keep records.* Any person involved in the peanut industry in any of the following capacities shall keep records for each such business:

(1) A person who dries farmers stock peanuts by artificial means for a producer;

(2) A handler;

(3) A warehouse operator;

(4) A common carrier of peanuts;

(5) A broker or dealer in peanuts;

(6) A processor of peanuts;

(7) A farmer engaged in the production of peanuts;

(8) An agent marketing peanuts for a producer or acquiring peanuts for a handler or marketing association; or

(9) A person engaged in the business of cleaning, shelling, crushing, or salting peanuts or manufacturing peanuts products.

(b) *Handler records and reports of peanuts acquired.* As required by this section and in accordance with instructions issued by CCC, each handler shall keep records and make reports, with respect to each lot of farmers stock peanuts such handler acquires, as follows:

(1) *Inspected peanuts*—(i) If the Federal-State Inspection Service inspects a lot of peanuts, the handler shall complete a form ASCS–1007 or such other form approved by CCC or ASCS and on which the following information must be entered:

(A) The name and address of the farm operator, and the State and county codes and farm number of the farm on which the peanuts were produced, if the peanuts are marketed by the producer;

(B) The handler number if the peanuts are marketed by a handler;

(C) The buying point number assigned to identify the physical location of the buying point where the peanuts were marketed;

(D) Either the name, address and handler number of the handler, or if the peanuts are accepted for loan through the marketing association, the marketing association name, number and address;

(E) The net weight of the peanuts;

(F) The quantity of peanuts marketed as either loan quota, loan additional, commercial quota, or contract additional;

(G) The date of purchase; and

(H) The amount of any penalty, assessment or claim collected.

(ii) Handlers described in paragraph (c) of this section shall cause electronic records of the data recorded on form ASCS–1007 to be generated and transmitted to ASCS. The data shall be transmitted in the manner and by the time prescribed by the Director, TPD.

(2) *Noninspected peanuts.* A handler who acquires farmers stock peanuts which have not been inspected by the Federal-State Inspection Service shall complete a form ASCS–1030 or such other form approved by CCC or ASCS for general use, for each lot of farmers stock peanuts acquired. The handler shall use ASCS–1030–P, Handler's Report of Purchases of Noninspected Peanuts, or such other form approved by CCC or ASCS for general use, to transmit the form ASCS–1030 or other approved form to the State ASC committee in the State in which the handler's business is located or such other location or entity approved by CCC or ASCS. The handler shall complete the form ASCS–1030 or other approved form to show the following:

(i) Name and address of the seller;

(ii) Name and address of the farm operator and the State and county codes and farm number of the farm on which the peanuts were produced, if the peanuts are marketed by the producer;

(iii) The handler's name, address and registration number when the peanuts are purchased from another handler;

(iv) Type of peanuts purchased;

(v) Date of purchase;

(vi) Quantity purchased;

(vii) Method of determining the weight; and

(viii) Signature of the seller and the date the seller signed the form ASCS–1030 or other approved form.

(c) *Handler certification of computer software.* Each handler who is required to coordinate records with USDA electronic records system for peanuts shall prepare and use computer software that will generate records, files, reports or other electronic information as required in accordance with paragraph (b)(1) of this section, and will transmit such records, files, reports or other electronic information in the form or format and in a timely manner as may be required by ASCS or CCC. Such handler shall certify by the final date prescribed by the Director, TPD, that the handler's software meets the requirements prescribed for such software.

(d) *Handler records of resales of farmers stock peanuts.* Each handler who resells farmers stock peanuts shall keep records of:

(1) Name and address of the buyer, and if the peanuts are sold to a handler, the buyer's handler number;

(2) Date of the sale;

(3) Type of peanuts sold; and

(4) Pounds (net weight) of peanuts sold.

(e) *Handler records of peanuts shelled or milled for a producer.* The handler shall maintain records of peanuts shelled for a producer including the following information:

(1) Date of shelling or milling;

(2) Name and address of the producer;

(3) State and county codes and the farm number of the farm where the peanuts were produced;

(4) Quantity of peanuts (farmers stock basis) shelled or milled;

(5) Quantity of shelled or milled peanuts retained by the sheller; and

(6) Quantity returned to the producer.

(f) *Handler records of peanuts dried for a producer.* The handler shall maintain records of peanuts dried for a producer including the following information:

(1) State and county codes and the farm number of the farm where the peanuts were produced;

(2) Name and address of the producer; and

(3) Quantity dried as determined by the farmers stock basis weight after drying, and the date the drying was completed.

(g) *Handler records of peanuts from which LSK's or pods are removed for a producer.* The handler shall maintain records of the peanuts from which the

LSK's or pods were removed for a producer if such LSK's or pods are removed in commercial quantities or, when removed with foreign material, are recoverable in commercial quantities. The records must contain the:

(1) Date of removal;

(2) Name and address of the producer;

(3) State and county codes and the farm number of the farm where the peanuts were produced;

(4) Gross weight of:

(i) Peanuts prior to removal of LSK's or pods;

(ii) Peanuts removed as LSK's;

(iii) Peanuts removed as pods;

(iv) Foreign material removed; and

(v) Peanuts remaining after removal of foreign material and LSK's or pods;

(5) Quantity of peanuts which the person performing the service retains in the form of pods and LSK's; and

(6) Quantity of peanuts returned to the producer as:

(i) Pods;

(ii) LSK's; and

(iii) LSK's and pods.

(h) *Handler records of sales and disposal of peanuts.* Each handler shall maintain records of all sales or other disposal of peanuts. Such records shall show:

(1) The date of sale or disposal of such peanuts;

(2) The quantity of peanuts sold;

(3) The type of peanuts sold;

(4) The name of the purchaser;

(5) That the peanuts were sold either as:

(i) Farmers stock peanuts; or

(ii) Milled peanuts;

(6) That the peanuts were sold either as:

(i) Edible peanuts; or

(ii) Peanuts for crushing; and

(7) Any other information which may be required by this part.

(i) *Method of keeping records.* Each handler shall maintain the records required by this part in a manner which will enable the marketing association, CCC, ASCS, and other representative of the Secretary to readily reconcile the quantities, grades and qualities of all peanuts acquired and disposed of by such a handler. Records concerning the acquisition and disposal of contract additional peanuts must also be kept in a manner that allows the marketing association, CCC, ASCS, or any other representative of the Secretary to readily determine whether there has been compliance with the provisions of this part.

§ 1446.802 Examination of records and reports.

The Executive Vice President, CCC, the Deputy Administrator, ASCS, the Director, TPD, the State Executive Director and any person authorized by any one of such persons, and any auditor or agent of the Office of Inspector General is authorized to examine any records that such person has reason to believe are relevant to any matter pertinent to the peanut poundage quota program operated pursuant to the provisions of part 729 of this title and provisions of this part. Upon request, any person required by this part to keep records shall make available for examination such books, papers, records, accounts, correspondence, contracts, documents, and memoranda as are under such person's control.

§ 1446.803 Retention of records.

Persons required to maintain records under this part shall maintain all records for a period of three years following the end of the marketing year in which the peanuts were produced. Notwithstanding the preceding sentence, records relating to contract additional peanuts for which penalties or liquidated damages have been assessed, shall be retained for 6 years following the date the assessment was made or until the conclusion of the assessment action, whichever is later and records shall be kept for such longer periods of time as may be requested in writing by CCC.

§ 1446.804 Information confidential.

All data requested and obtained by the Secretary in accordance with the provisions of this part shall be kept confidential by all employees of USDA and of the marketing association. Such data shall be released only at the discretion of the Executive Vice President, CCC, and then only to the extent that such release is not prohibited by law.

§ 1446.805 Penalty for failure to keep records and make reports.

Any person, who fails to make any report or keep any record as required under this part or who falsifies any information on any such report or record shall be subject to a penalty in accordance with § 1446.703 of this part.

§ 1446.806 Fraud by handler.

Any misrepresentation made or effectively made by a handler within or without the records or reports maintained in connection with this part shall be subject to a penalty under this part and such penalty shall be in addition to any other remedies available by law for such misrepresentation (including, but not limited to, criminal prosecution). In addition, the handler and any individual or other person involved with such misrepresentation, including employees of the handler, shall be liable to CCC for all costs which CCC incurs as a result of such misrepresentation, together with interest at the per annum rate which the Treasurer of the United States charged CCC on the date the misrepresentation was made.

§ 1446.807 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR part 1446) have been approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. chapter 35 and have been assigned OMB control numbers 0560–0006 and 0560–0014.

Signed at Washington, DC on April 15, 1991.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 91–9149 Filed 4–16–91; 3:36 pm]

BILLING CODE 3410-05-M

federal register

Friday
April 19, 1991

Part V

The President

Part V

The President

Federal Register
Vol. 56, No. 76
Friday, April 19, 1991

Presidential Documents

Title 3—

The President

Proclamation 6271 of April 17, 1991

Pan American Day and Pan American Week, 1991

By the President of the United States of America

A Proclamation

Just two months ago the Caribbean island nation of Haiti enjoyed, after decades of dictatorship, the inauguration of a President chosen in free, secure, and credible elections. This milestone in the history of Haiti marked yet another significant stride toward a completely democratic Western Hemisphere. Indeed, with the principal exception of Castro's Cuba, the nations of the Americas are experiencing a great resurgence of democracy. From Tierra del Fuego to Hudson Bay, from the Lesser Antilles to the Galápagos, courageous and determined peoples are reaping the blessings of liberty and self-government.

Today, after several successive free elections in the vast majority of countries in the hemisphere, the nations of the Americas have an historic opportunity to set an example of sustained and effective representative democracy and economic development. Indeed, it seems fitting that the hemisphere of George Washington and Toussaint L'Ouverture, of Thomas Jefferson and Simon Bolívar, of James Madison and Jose de San Martín, should help to lead the way to a freer, more prosperous future for all mankind.

The devotion to democratic ideals shared by the peoples of the Americas forms the cornerstone of the unique international alliance whose anniversary we celebrate this week. Just over a century ago, the nations of this hemisphere established the International Union of American Republics, later known as the Pan American Union. Today its successor, the Organization of American States, is working to promote transitions from dictatorship to democracy throughout the hemisphere.

Signatories to the OAS Charter, adopted in 1948, expressed their conviction that "the true significance of American solidarity and good neighborliness can only mean the consolidation on this continent . . . of a system of individual liberty and social justice based on respect for the essential rights of man." After a century of partnership, we know that the proudest days of the inter-American community have been those when it has faithfully upheld these ideals. Accordingly, the United States will continue working to promote respect for human rights and the rule of law throughout the region.

Through the OAS Charter, members of the inter-American community also agreed to "promote, by cooperative action, their economic, social, and cultural development." To help achieve this goal, I have proposed the Enterprise for the Americas Initiative, which will promote free and fair trade, investment, debt reduction, and growth, as well as environmental protection, in Latin America and the Caribbean. In addition, we will implement the commitments of the Cartagena Declaration. Illicit drug trafficking and violence pose a grave threat to the stability of nations as well as to the freedom and safety of millions of individuals throughout the Americas. The United States remains firmly committed to working with other members of the inter-American community in the areas of interdiction, law enforcement, and crop substitution.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Sunday, April 14, 1991, as Pan American Day and the week of April 14 through April 20, 1991, as Pan American Week. I urge the Governors of the fifty States and the Commonwealth of Puerto Rico, and officials of other areas under the flag of the United States, to honor these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of April, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-9448
Filed 4-17-91; 5:05 pm]
Billing code 3195-01-M

Presidential Documents

Proclamation 6272 of April 17, 1991

Jewish Heritage Week, 1991 and 1992

By the President of the United States of America

A Proclamation

The Jewish people share a rich and vibrant heritage, one that has endured through the ages, even through exile and dark periods of systematic persecution. That great and abiding heritage has had a profound influence on the character of the United States. Thus, it is with great pleasure that millions of Americans join with their Jewish friends and neighbors in celebrating Jewish Heritage Week.

The American way of life—indeed, the development of all Western civilization—has been shaped, in large part, by the laws and teachings recorded in the Old Testament and Judaic tradition. Our forefathers' declaration of the unalienable rights of individuals was rooted in the biblically supported belief that all people are created equal, in the image of the Almighty. The principles of ethical and moral conduct that form the basis of American civil order and the foundation of any truly free and just society stem from the commandments given by God to Moses. Accordingly, through their efforts to preserve Judaic law and tradition, American Jews help to ensure that our Nation's moral heritage is continually strengthened and renewed. For example, the traditional observance of Shavuot, which recalls the giving of the law on Mount Sinai, offers a powerful reminder of the relationship between respect for the word of God and the preservation of civil peace and liberty.

Through the observance of Shavuot and other special days, Jews affirm both their faith and their identity as a people. As the recent celebration of Passover reminds us, that faith has been tested, and proved, time and again in the history of the Jewish people.

The Jewish people have been subjected to a number of great trials during this century alone. On Yom HaShoah, Holocaust Memorial Day, Jews recall the Nazi atrocities that claimed the lives of 6 million of their fellow Jews, as well as the lives of millions of other men, women, and children in Europe during World War II. By joining in this commemoration, and in remembrance of the Warsaw Ghetto Uprising, we are reminded of the enduring faith and courage of the Jewish people.

Jews have played a vital role in our country's history since colonial times. Many were active in supporting the Revolutionary War and in the settling of new lands and cities during America's westward expansion. Jewish men, women, and children also formed part of each great wave of immigration to these shores. Today, Jews continue to contribute in virtually every aspect of American life.

As we celebrate the many contributions that Jewish men and women have made to our Nation, we also reaffirm the deep friendship between the United States and Israel. The founding of the modern State of Israel following the Holocaust is further testimony to the faith, determination, and industry of the Jewish people.

The Congress, by House Joint Resolution 134, has designated the week of April 14 through April 21, 1991, and the week of May 3 through May 10, 1992, as "Jewish Heritage Week" and has authorized and requested the President to issue a proclamation in observance of these occasions.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim the weeks of April 14 through April 21, 1991, and May 3 through May 10, 1992, as Jewish Heritage Week. I encourage all Americans to join in observing these occasions with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of April, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and fifteenth.

George Bush

[FR Doc. 91-9449
Filed 4-17-91; 5:06 pm]
Billing code 3195-01-M

Presidential Documents

Executive Order 12759 of April 17, 1991

Federal Energy Management

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Energy Policy and Conservation Act, as amended (Public Law 94–163, 89 Stat. 871, 42 U.S.C. 6201 *et seq.)*, the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 1901 *et seq.*), section 205(a) of the Federal Property and Administrative Services Act, as amended (40 U.S.C. 486(a)), and section 301 of title 3 of the United States Code, it is hereby ordered as follows:

Section 1. *Federal Energy Efficiency Goals for Buildings.* Each agency shall develop and implement a plan to meet the 1995 energy management goals of the National Energy Conservation Policy Act, as amended, 42 U.S.C. 8251 *et seq.*, and by the year 2000 reduce overall energy use of Btu's per gross square foot of the Federal buildings it operates, taking into account utilization, by 20 percent from 1985 energy use levels, to the extent that these measures minimize life cycle costs and are cost-effective in accordance with 10 CFR Part 436.

Sec. 2. *Federal Energy Efficiency Goals for Other Facilities.* Each agency will prescribe policies under which its industrial facilities in the aggregate increase energy efficiency by at least 20 percent in fiscal year 2000 in comparison to fiscal year 1985, to the extent that these measures minimize life cycle costs and are cost-effective in accordance with 10 CFR Part 436. Each agency shall establish appropriate indicators of energy efficiency to comply with this section.

Sec. 3. *Minimization of Petroleum Use in Federal Facilities.* Each agency using petroleum products for facilities operations or building purposes shall seek to minimize such use through switching to an alternative energy source if it is estimated to minimize life cycle costs and which will not violate Federal, State, or local clean air standards. In addition, each agency shall survey its buildings and facilities to determine where the potential for a dual fuel capability exists and shall provide dual fuel capability where practicable.

Sec. 4. *Implementation Strategies.* (a) Except as provided by paragraph (b) and (c) of this section, each agency shall adopt an implementation strategy, consistent with the provisions of this order, to achieve the goals established in sections 1, 2, and 3. That strategy should include, but not be limited to, changes in procurement practices, acquisition of real property, participation in demand side management services and shared savings agreements offered by private firms, and investment in energy efficiency measures. The mix and balance among such measures shall be established in a manner most suitable to the available resources and particular circumstances in each agency.

(b) The Secretary of Defense may, if he determines it to be in the national interest, issue regulations exempting from compliance with the requirements of this order, any weapons, equipment, aircraft, vehicles, or other classes or categories of real or personal property which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature.

(c) The Secretary of the Treasury and the Attorney General, consistent with their protective and law enforcement responsibilities, shall determine the extent to which the requirements of this order shall apply to the protective and law enforcement activities of their respective agencies.

Sec. 5. *Procurement of Energy Efficient Goods and Products.* In order to assure the purchase of energy efficient goods and products, each agency shall select for procurement those energy consuming goods or products which are the most life cycle cost-effective, pursuant to the requirements of the *Federal Acquisition Regulation.* To the extent practicable, each agency shall require vendors of goods to provide appropriate data that can be used to assess the life cycle costs of each good or product, including building energy system components, lighting systems, office equipment, and other energy using equipment.

Sec. 6. *Participation in Demand Side Management Services.* Each agency shall review its procedures used to acquire utility and other related services, and to the extent practicable and consistent with its strategy established pursuant to section 4, remove any impediments to receiving, utilizing, and taking demand side management services, incentives, and rebates offered by utilities and other private sector energy service providers.

Sec. 7. *Energy Efficiency Requirement for Current Federal Building Space.* Each agency occupying space in Federal buildings shall implement the applicable rules and regulations regarding Federal property and energy management.

Sec. 8. *Energy Efficiency Requirements for Newly Constructed Federal Buildings.* Each agency responsible for the construction of a new Federal building shall ensure that the building is designed and constructed to comply with the energy performance standards applicable to Federal residential and commercial buildings as set forth in 10 CFR Part 435. Each agency shall establish certification procedures to implement this requirement.

Sec. 9. *Vehicle Fuel Efficiency Outreach Programs.* Each agency shall implement outreach programs including, but not limited to, ride sharing and employee awareness programs to reduce the petroleum fuel usage by Federal employees and by contractor employees at Government-owned, contractor-operated facilities.

Sec. 10. *Federal Vehicle Fuel Efficiency.* Consistent with its mission requirements, each agency operating 300 or more commercially designed motor vehicles domestically shall develop a plan to reduce motor vehicle gasoline and diesel consumptions by at least 10 percent by 1995 in comparison with fiscal year 1991. The Administrator of General Services, in consultation with the Secretary of Energy, shall issue appropriate guidance to assist agencies in meeting this goal. This guidance shall include guidance concerning vehicles to be covered, the use of alternative/blended fuels, initiatives to improve fuel efficiency of the existing fleet, the use of modified energy life cycle costing consistent with life cycle costing methods in 10 CFR 436, and limitations on vehicle type and engine size to be acquired. Each agency electing to use alternative fuel motor vehicles shall receive credit for such use.

Sec. 11. *Procurement of Alternative Fueled Vehicles.* The Secretary of Energy, with the cooperation of other appropriate agencies, and consistent with other Federal law, shall ensure that the maximum number practicable of vehicles acquired annually are alternative fuel vehicles as required by the Alternative Motor Fuels Act of 1988 (42 U.S.C. 6374.) Subject to availability of appropriations for this purpose, the maximum number practicable of alternative fuel vehicles produced by original equipment vehicle manufacturers shall be acquired by the end of model year 1995.

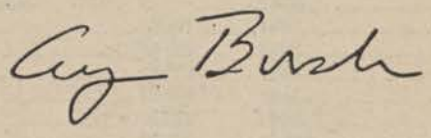
Sec. 12. *Federal Funding.* Within approved agency budget totals, each agency head shall work to achieve the goals set forth in this order. To the extent that available resources fall short of requirements, agency heads shall rank energy efficiency investments in descending order of the savings-to-investment ratios, or their adjusted internal rate of return to establish priority.

Sec. 13. *Annual Reports.* The head of each agency shall report annually to the Secretary of Energy, in a format specified by the Secretary after consultation with the heads of affected agencies, on progress in achieving the goals of this Executive order with respect to Federal buildings, facilities, and vehicles subject to this order. The Secretary of Energy will prepare a consolidated report to the President annually on the implementation of this order.

Sec. 14. *Definitions.* For the purpose of this order—

(a) the term "energy use" means the energy that is used at a building or facility and measured in terms of energy delivered to the building or facility;

(b) the term "Federal building" means any building in the United States which is controlled by the Federal Government for its use.



THE WHITE HOUSE,
April 17, 1991.

[FR Doc. 91-9473
Filed 4-18-91; 10:33 am]
Billing code 3195-01-M

Editorial note: For the President's remarks on signing Executive Order 12759, see the *Weekly Compilation of Presidential Documents* (vol. 27, no. 16).

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Friday, April 19, 1991

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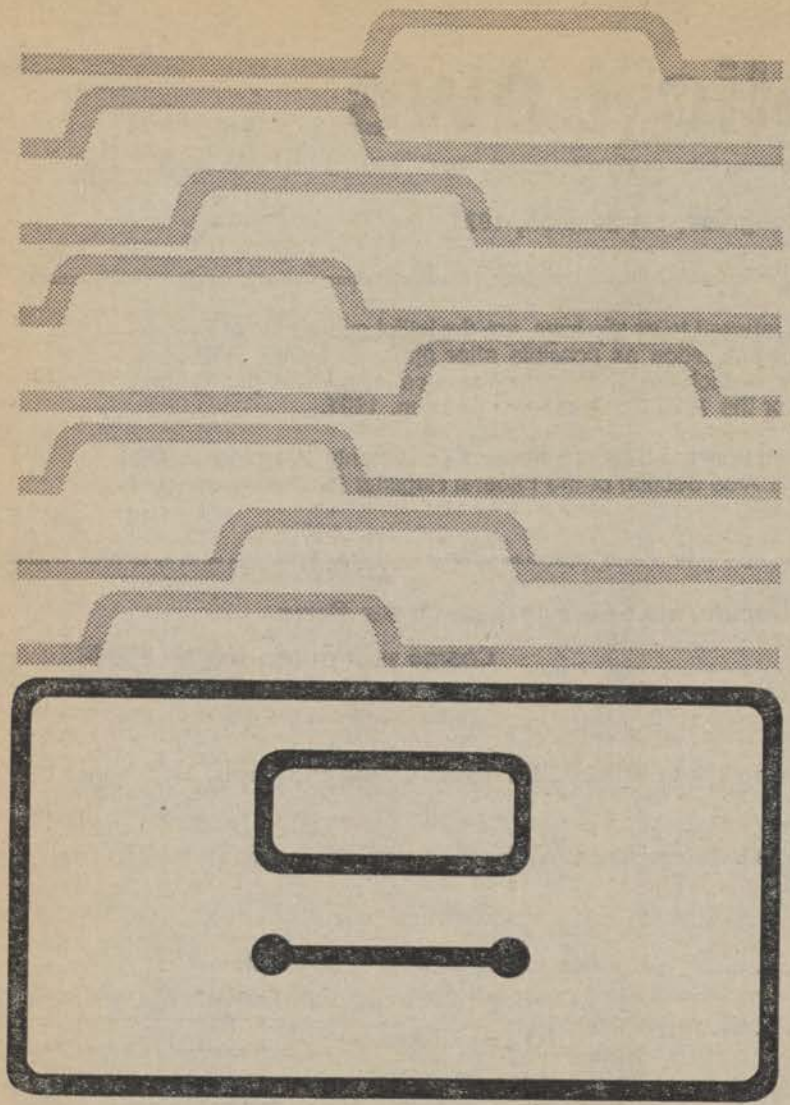

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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
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